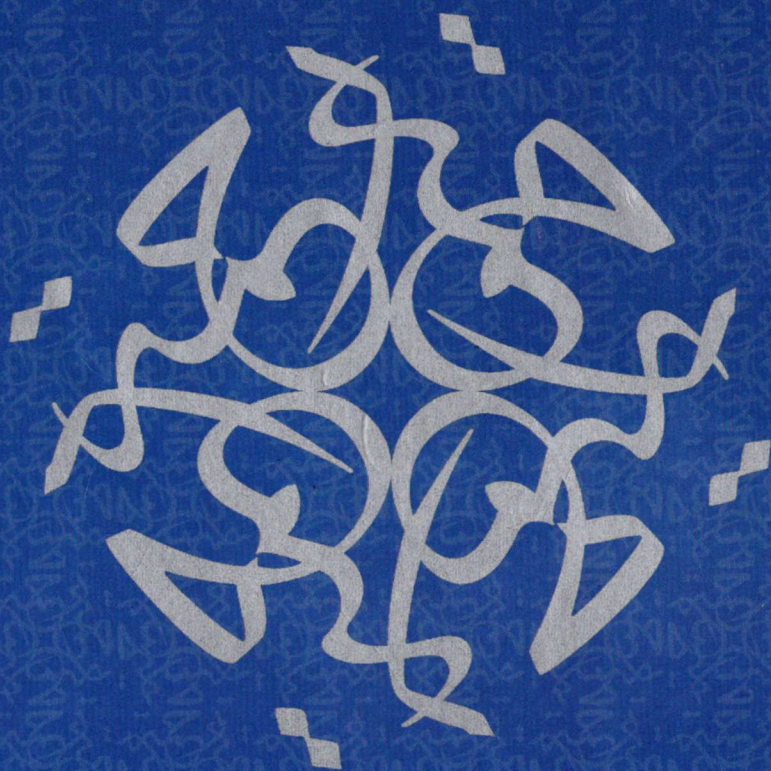


THE
MERCY
IN THE DIFFERENCE OF
THE FOUR SUNNI SCHOOLS OF ISLAMIC LAW



AL-QADI AS-SAFADI
MUHAMMAD IBN 'ABD AR-RAHMAN AS-SAFADI

D'AR AL-TAQWA

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of God, most Gracious, most Merciful

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DAR AL-TAQWA

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Introduction

Praise belongs to Allah. We praise Him and ask for His help, guidance and forgiveness. We seek refuge with Allah from the evil of our selves and our bad actions. Whoever Allah guides is guided and whoever He misguides will find no one to guide him. Praise belongs to Allah. No one can withhold what He gives or give what He withholds.

This book about the different rulings reached by the scholars of the four schools of *fiqh* is distinguished by its lack of bias and the straightforwardness of its content. It is designed as a reference book to acquaint the followers of different schools with the rulings of the other schools so that needless antagonism and misunderstandings do not spring up out of ignorance and prejudice. It is not meant to be a source in itself for deriving rulings and implementing actions, especially in a casual and untrained way. Its author is the famous *qāḍī*, Qāḍī Ṣafad, whose full name was Muḥammad ibn 'Abdu'r-Rahmān ibn al-Ḥusayn as-Ṣafadī ash-Shāfi'ī. He was one of the people of Damascus and wrote various books. He died in 784/1378.

Fiqh deals with putting the Message of Islam into practice. It involves both rulings about acts of worship which derive directly from Allah's Revelation to His Prophet, may Allah bless him and grant him peace, in the Book or the *Sunna*, regarding which the task of the Messenger is simply one of transmission and clarification, – “*Nor does he speak from whim. It is nothing but Revelation revealed.*” (53:3-4) – and rulings on worldly matters, about which the Messenger, may Allah bless him and grant him peace, was commanded to consult other people and about which he might sometimes retract his own opinion in favour of that of his Companions, as happened in the Battle of Uḥud or when he was asked about matters he did not have knowledge of.

Islam lays down several general rules for the Muslims to guide them in their search for correct rulings.

- Prohibition against looking into things which have not actually happened. Allah Almighty says: *"O you who believe! Do not ask about matters which, if they were made known to you, would make things difficult for you. If you do ask about them when the Qur'an is being sent down, they will be made known to you."* (5:101).
- Avoidance of a lot of questions and difficult problems. The Messenger, may Allah bless him and grant him peace, said, "Allah dislikes you indulging in a lot of idle chatter, a lot of questions and wasting property," and, "Allah has imposed obligations, so do not neglect them; He has established limits, so do not exceed them; and He has made certain things unlawful, so do not commit them. He has been silent about other things as a mercy to you, not out of forgetfulness, so do not ask about them."
- Keeping away from disagreement and division. Allah Almighty says, *"This faith of yours is a single faith"* (23:52); *"Hold fast to the rope of Allah all together, and do not separate"* (3:103); *"...and do not quarrel among yourselves lest you lose heart and your momentum disappear"* (8:46); and *"As for those who divide up their dīn and form into sects, you have nothing whatsoever to do with them."* (6:159)
- Referring disputed matters back to the Book and the Sunna. Allah Almighty says, *"If you have a dispute about something, refer it back to Allah and the Messenger,"* (4:59) and, *"The judgement concerning anything you differ about is Allah's affair."* (42:10)

So the matter is complete and its waymarks are clear. The Almighty says, *"Today I have perfected your dīn for you and completed My blessing upon you and am pleased with Islam as a dīn for you."* (5:3) The questions of the *deen* were made clear by referring to the judgement of Allah and His Messenger and so there is no reason for disagreement and schism between fellow Muslims. These are the rules according to which the Companions and those after them proceeded. There was only disagreement regarding certain

questions and that derived from different ways of understanding the sources and were understood in the context of the famous saying of the Messenger that differences in opinion amongst his *umma* were a mercy.

When the Imams of the schools appeared, they followed the methodology of those who had come before them and were not partisan for their own schools and did not compel anyone to follow them if he did not agree with one of their judgements. It is transmitted from all of them that when one of them made a judgement, he would say, "This is what my knowledge accords me. If you find in the Book of Allah or the *Sunna* of the Messenger of Allah anything which is contrary to my position, then discard my words."

It is related that when Imam Mālik collected his *al-Muwattā'*, al-Manṣūr wanted to make copies of it and send it to all corners of the Muslim world and compel people to act according to it to the exclusion of everything else. Imam Mālik refused, saying that his book did not contain all that was reported from the Messenger of Allah, may Allah bless him and grant him peace, and that many scholars had spread through the lands and they had knowledge which he did not have and knew *ḥadīths* which he did not know.

The Imams expended their greatest efforts to acquaint people with this *dīn* and guide them to it. They did not intend to be imitated as the Prophet was imitated. Their intention was to help people to understand the rulings of Allah. But their followers in later times became blindly partisan in their following of their judgements, devoting all their strength to disputation and defending their position. They gave the statement of their Imam the status of a statement of the Lawgiver and would not countenance *fatwās* about questions contrary to the ruling their Imam had given.

This fracturing of the Community reached such a point that scholars argued about such matters as whether a Ḥanafī woman could marry a Shāfi'ī man. Some even said that such a marriage was not valid because the Shāfi'īs permit a Muslim to say, "I am a believer, Allah willing." The effects of that spread of intellectual stultification was the rigidification of the glorious Sharī'a which the noble Prophet, may Allah bless him and grant him peace, brought from Allah. Some scholars turned to this world, desiring the favour

of rulers, condoning their misguidance, and hunting through the books to find legal loopholes for them, all for the sake of a few measly dirhams. But good will remain in this Community until the Day of Rising, as the Prophet, may Allah bless him and grant him peace, told us, and a group of this Community will not be harmed by those who differ from them until the Day of Rising.

The Muslims are all summoned to discard division and bias because this weakens the Community, removes mercy and gives power to the enemy. Allah says:

“Hold fast to the rope of Allah all together, and do not separate. Remember Allah’s blessing to you when you were enemies and He joined your hearts together so that you became brothers by His blessing. You were on the very brink of a pit of the Fire and He saved you from it. Thus does Allah make His Signs clear to you, so that perhaps you will be guided.” (3:103)

A Brief Note about the Four Imams

Imam Abū Ḥanīfa

He is an-Nu‘mān ibn Thābit at-Taymī, the *faqīh* of Iraq and one of the four Imams. He was born in 80 AH while some of the Companions were still alive. He saw Anas ibn Mālik and perhaps other Companions. It is reported that he related from seven Companions, but Allah knows best. He certainly related from many of the *Tābi‘ūn*, including ‘Ikrima, ‘Aṭā’, Qatāda, az-Zuhrī, Nāfi‘, the client of Ibn ‘Umar, Salama ibn Kuhayl and many others.

Yahyā ibn Ma‘īn said about Abū Ḥanīfa, “He was reliable. He was one of the people of truthfulness, uninterested in lying. Ibn Hubayra beat him to make him accept the office of *qāḍī*, but he was stalwart in his refusal.” Yahyā ibn Sa‘īd preferred his position in *fatwā* and said, “We have not heard any opinion better than that of Abū Ḥanīfa.” He often accepted his statements. ‘Abdullāh ibn al-Mubārak said, “If it were not that Allah had helped me with Abū

Ḥanīfa and Sufyān ath-Thawrī, I would have been like other people.”

Ash-Shāfi‘ī said, “Whoever desires *fiqh* should rely on Abū Ḥanīfa. Whoever wants *sīra* should rely on Muḥammad ibn Ishāq. Whoever desires *ḥadīth* should rely on Mālik. Whoever wants *tafsīr* should rely on Muqātil ibn Sulaymān.”

‘Abdullāh ibn Da‘ūd al-Ḥarbī said, “People should pray for Abū Ḥanīfa in their supplications because of his preserving *fiqh* and *sunan* for them.” Sufyān ath-Thawrī and Ibn al-Mubārak said, “Abū Ḥanīfa had the most *fiqh* of the people of the earth in his time.” Abū Nu‘aym said, “He went deeply into questions.”

He died in Rajab 150 AH at the age of 70.

Imam Mālik

Mālik ibn Anas was the Imam of the Abode of the Hijra in his time. He was born in either 93, 94, or 95 AH. He related from several of the *Tābi‘ūn* and a group of Imams related from him, including Sufyān ath-Thawrī, Sufyān ibn ‘Uyayna, Ibn al-Mubārak, al-Awzā‘ī, ash-Shāfi‘ī. Amongst his shaykhs were az-Zuhrī and Yahyā ibn Sa‘īd al-Anṣārī.

Al-Bukhārī said, “The soundest of *isnāds* is that of Mālik from Nāfi‘ from Ibn ‘Umar.” Yahyā ibn Ma‘īn said, “All of those from whom Mālik related are reliable, like Abū Umayya.” Ash-Shāfi‘ī said, “If it is a question of *ḥadīth*, then Mālik is the star.” He said, “Whoever wants *ḥadīth* should rely on Mālik.” Abū Muṣ‘ab said, “I heard Mālik say, ‘I did not give *fatwā* until seventy had testified that I was qualified to do so.’” When he wanted to relate *ḥadīth*, he cleaned himself and put on perfume and combed his beard and put on his best clothes out of respect for the *ḥadīth* of the Messenger of Allah, may Allah bless him and grant him peace, and respect for knowledge.

At-Tirmidhī related that Abū Hurayra said, “The time is close at hand when people will beat their camels in quest of knowledge and will not find anyone with more knowledge than the scholar of Madina.” Ibn ‘Uyayna said that this referred to Mālik ibn Anas, as

did Sufyān and az-Zuhrī. When he was dying, he said, "I testify that there is no god but Allah," and then he said, "The matter belongs to Allah, before and after."

He died on 14 Ṣafar or Rabī' al-Awwal 177 or 178 AH.

Imam ash-Shāfi'ī

He is Abū 'Abdullāh Muḥammad ibn Idrīs al-Qurayshī al-Muṭṭalibī. He was born in 150 AH in the same year that Abū Hanīfa died, perhaps even the very day. He was taken to Makka at the age of two.

Ash-Shāfi'ī said, "I saw the Messenger of Allah in a dream and he said to me, 'Boy, who are you?' I replied, 'One of your tribe, Messenger of Allah.' He said, 'Approach me.' I did so and he took some of his saliva. I opened my mouth and he put some of his saliva on my tongue, mouth and lips, and said, 'Go, may Allah bless you.'"

Ash-Shāfi'ī could recite the whole Qur'an by heart at the age of seven and memorised the *Muwatṭā'* at the age of ten. He gave *fatwā* at the age of fifteen or eighteen with the permission of his shaykh, Muslim ibn Khālid az-Zanjī. He was interested in language and poetry. He stayed among the tribe of Hudhayl for about ten years and learned from them the dialects of the Arabs and their eloquence. He had memorised the *Muwatṭā'* before he met Mālik. When he went to Mālik, Mālik looked at him for a time – and Mālik had insight into people – and he asked, "What is your name?" "Muḥammad," he replied. Mālik said to him, "Muḥammad, fear Allah and avoid acts of disobedience. You will have some importance." Ash-Shāfi'ī said to him, "Yes, and honour." He told him, "Come tomorrow with those who will read the *Muwatṭā'* to me." Ash-Shāfi'ī said, "I can recite it from memory." He came the next day and began to read. At a certain point he wanted to stop reading, fearing that Mālik would be bored. Mālik, however, was enjoying his reading and urged him to read more and he read the entire book in a few days. Then he stayed in Madina until Mālik died.

'Abdullāh ibn Aḥmad ibn Ḥanbal said, "I asked my father, 'What sort of man was ash-Shāfi'ī? I have heard you making a lot of supplication for him.' He said, 'My son, ash-Shāfi'ī is like the sun for the day and like well-being for mankind.'"

He came to Baghdad in 195 AH and stayed there for two years. Then he went to Makka and then returned to Baghdad in 198 AH and stayed there a month. Then he went to Egypt where he died after '*Ishā*' on Friday night and was buried the following day after '*Aṣr*'. It was the last day of Rajab in 204 AH and he was fifty-four years old.

Imam Aḥmad ibn Ḥanbal

It is said that his father brought his mother, who was pregnant, from Marv and she gave birth to him in Baghdad in Rabī' al-Awwal 164 AH. His father died when he was three years old and his mother brought him up. Al-Bayhaqī reports from al-Muzanī that ash-Shāfi'ī said to Hārūn ar-Rashīd, "The Yemen needs a *qāḍī*." Hārūn ar-Rashīd, responded, "Choose a man whom we can appoint." Ash-Shāfi'ī said to Ahmad ibn Hanbal who frequented him, "Will you not accept to be *qāḍī* of Yemen?" He vehemently refused, saying to ash-Shāfi'ī, "I come to you for knowledge and little of this world and you command me to be a *qāḍī*! Were it not for the pursuit of knowledge, I would never speak to you again!" Ash-Shāfi'ī was ashamed.

Al-Bayhaqī reported that a man came to Imam Aḥmad and said, "My mother has been an invalid for twenty years. She sent me to ask you to make supplication for her." He seemed to be annoyed about the request and said, "We are more in need of her making supplication for us than us for her." Then he made supplication for her. The man returned to his mother and she came to him walking and said, "Allah has given me health."

Imam Aḥmad ibn Ḥanbal was subjected to the Inquisition (*Mihna*) over the createdness of the Qur'an and he held firm and emerged from the trial purified. Scholars praised him, especially after the Inquisition. Al-Muzanī said, "Aḥmad in the *Mihna*, Abū

Bakr during the *Ridda*, 'Umar on the Day of Thaqifa, 'Uthmān under siege in his house and 'Alī at the battles of the Camel and Šiffīn." Qutayba said, "When Sufyān ath-Thawrī died, scrupulousness died. When ash-Shāfi'ī died, the *sunan* died. When Aḥmad ibn Ḥanbal died, innovations appeared." Yaḥyā ibn Ma'īn said, "There were qualities in Aḥmad ibn Ḥanbal which I never saw in anyone else at all. He was a *muḥaddith*, a *ḥāfiẓ*, a scholar, scrupulous and ascetic, and a man of intellect."

Yaḥyā ibn Ma'īn said, "People want to be like Aḥmad ibn Ḥanbal. By Allah, we do not have the power to be like him or to follow his path."

When he was dying, he indicated for his family to do *wuḍū'* for him and when they began to do *wuḍū'* for him, he indicated to them to let the water run between his fingers, and he kept mentioning Allah the whole time. When they finished his *wuḍū'*, he died. That was in 241 AH at the age of 77. Al-Bayhaqī and others related that Amir Muḥammad ibn Ṭāhir commanded that the people who came to pray over the Imam should be counted. He found that there were 1,300,000, not counting those in boats. Al-Bayhaqī reported that 'Abdu'l-Wahhāb al-Warrāq said, "We have not heard that there has ever been a better attended funeral, either in the *Jāhiliyya* or Islam, than the funeral of Aḥmad ibn Ḥanbal."

Preface

"When Allah desires good for a person, he gives him understanding of the *dīn*." (*ḥadīth*)

Praise belongs to Allah who is Most Generous and revealed His Qur'an and in it clarified the rules and pillars of His *dīn*. Then He gave His Messenger its explanation and he, in turn, made it clear to his Companions while he was alive. Then the Companions dispersed after his death, seeking Allah's pleasure and bounty. When lands were conquered and the Divine Unity had been proclaimed far and wide, they turned their thoughts to the acquisition of provision and began settling down in particular places, each Companion teaching what he knew to his followers and clarifying what he understood to the people around him. Each of them had many followers who applied themselves to gaining knowledge until they became accomplished and strove with the greatest effort to ascertain what was correct, out of the desire to discharge the trust placed on them of conveying the Message. Some of them disagreed with one another about certain points because of the intensity of their efforts in seeking out the truth but their disagreement was a mercy for creation. Glory be to Allah, the Wise!

I praise Him and I testify that there is no god but Allah alone with no partner. I testify that Sayyidunā Muḥammad is His slave and His Messenger and Beloved whom He protected, supported and helped. May Allah bless and grant peace on him and his family and Companions.

This is a useful summary, Allah willing, of many questions on which there is agreement and disagreement. I will mention them without eliciting the proofs for each position so that it will be easier to remember, may Allah make it a righteous and profitable action and effort and give people benefit through it!

Chapter One

Purity

By consensus, the prayer is only valid when performed in a state of purity. Scholars agree that purification with water is obligatory when it is available and it is possible to use it. *Tayammum* with earth can be done when water is not available. The *fuqahā* agree that sea-water, sweet and salty water, are the same with regard to purity and purification. Nonetheless, there are rare instances of those who forbid *wuḍū* using sea-water, some who allow it out of necessity, and some who permit *tayammum* when nothing but sea-water is available. Scholars agree that purity can only be achieved by means of water. Similarly, impurity can only be removed by pure water according to Mālik, ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that impurity can be removed by any pure liquid.

Heating water: It is disliked to use water heated by the sun, according to the soundest position among the Shāfi'ites. Later scholars in the three schools say that it is not disliked. The consensus is that heated water is not disliked, but Aḥmad disliked water heated by fire.

Used *wuḍū*' water: Water which has been used for the obligatory purification is pure but not purifying, according to the best known position in the school of Abū Ḥanīfa, and it is also the soundest position in the school of ash-Shāfi'ī and Aḥmad. Mālik says that it is also purifying. It is reported from Abū Ḥanīfa that it is impure. It is agreed that rose water and vinegar are not purifying.

Water changed by a pure substance: Water greatly changed by saffron or any other pure substance may not be used for purification according to Mālik, ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa and his people allow it, saying that changing water with something pure does not prevent it purifying other things as long as nothing has been cooked in it and as long as the substance does not dominate it

completely. Water altered by standing for a long time is agreed to be pure. Aḥmad disliked doing *wuḍū* or *ghusl* with Zamzam water out of his desire to preserve it.

Purification by fire and sun: Fire and the sun do not remove impurity except in the view of Abū Ḥanīfa. If the skin of carrion has dried out in the sun, he considers it pure without tanning. The same applies in his view to an impurity on the surface of the earth which dries in the sun: it becomes pure where it is and it is permitted to pray on it. He also considers that fire removes impurity.

Water made impure by the addition of an impurity: If a quantity of standing water amounts to less than 216 litres, it becomes impure by mere contact with an impurity, even if it is not changed, according to Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad in one of his transmissions. Mālik and Aḥmad, in another transmission, say that it remains pure, provided it is not altered. If it reaches 216 litres and an area of four cubits, it only becomes impure if it is changed, according to ash-Shāfi'ī and Aḥmad. Mālik says that the quantity of water which can be affected by impurity does not have a known volume, but if its colour, taste or smell is changed, then it is impure, no matter whether it is a little or a lot. Abū Ḥanīfa says that it is the mixing itself which matters. If any impurity is mixed with water, it is impure unless there is a lot of water. Running water is the same as standing water in the view of Abū Ḥanīfa, Aḥmad, and the new school of ash-Shāfi'ī. Mālik says, "Running water only becomes impure by being changed, no matter whether it is a little or a lot. It was the old position of ash-Shāfi'ī and some Shāfi'ites still take that view.

Gold and silver vessels: Using gold and silver vessels for eating, drinking and *wuḍū* is forbidden for men and women by agreement, except for a weak report from ash-Shāfi'ī.

Siwak and circumcision: Use of siwak is *sunna* by agreement. Abū Ḥanīfa and Mālik say that it is not disliked after midday, while ash-Shāfi'ī says that it is. Aḥmad has two positions. Circumcision is mandatory according to Mālik, ash-Shāfi'ī and Aḥmad, while Abū Ḥanīfa says that it is recommended.

Impurity

Wine: All the Imams agree that wine is impure. They agree that if it becomes vinegar on its own, it is pure. If it is turned into vinegar by the addition of something, ash-Shāfi'ī and Aḥmad say that it is impure. Mālik says that it is disliked to cause it to turn to vinegar, but if it happens, then it is pure and lawful. Abū Ḥanīfa says that it is permitted to turn it into vinegar and, if that is done, it is pure and lawful.

Dogs: Ash-Shāfi'ī and Aḥmad consider dogs to be impure and say a vessel licked by a dog must be washed seven times because of the impurity. Abū Ḥanīfa says that it is impure but that it need only be washed in the same way as anything else which becomes impure for any other reason. When it is only a question of probability, the impurity is removed by one washing. Otherwise, it must be washed until one is certain that the impurity has been removed, even if it needs to be washed twenty times. Mālik says that dogs are pure and what they lick is not made impure, but that a vessel licked by a dog should be washed to avoid filth.

Pigs: Pigs have the same ruling as dogs. Anything they make impure must be washed seven times, according to the soundest position in the Shāfi'ite school. Most scholars say that the preferred position is that it should be washed once because the basic position is lack of obligation unless the *Sharī'a* imposes it. Mālik says that a pig is pure while alive. We have no clear evidence of its being impure while it is alive. Abū Ḥanīfa says that it should be treated like any other impurity.

Purification from impurities: As for cleansing vessels, garments and bodies from impurities other than dogs and pigs, no specific number of washings are required according to Abū Ḥanīfa, Mālik, and ash-Shāfi'ī and there are various transmissions from Aḥmad, the most well-known of which is that it is mandatory to wash things a specified number of times. A vessel must be washed three or seven times. He also says there is no specific number, except in the case of dogs and pigs. It is enough to sprinkle water on the urine of a boy who has not yet had solid food. A girl's urine must be properly

washed, according to ash-Shāfi'ī and Abū Ḥanīfa. Mālik says that the urine of both sexes must be washed, both having the same ruling. Aḥmad says that the urine of the boy is pure as long as he has not eaten food.

Skins of carrion: In the view of Abū Ḥanīfa, the skins of all carrion animals are purified by tanning except for pigskin. The most likely transmission from Mālik, however, is that they are not pure, but may be used for dry things, but not for water, except for the skin of an aquatic creature. Ash-Shāfi'ī says that all skins are made pure by tanning, except for dogskin and pigskin and what is made from them. One transmission from Aḥmad says that they are not pure and that it is not permitted to use them for anything, applying to them the same ruling as applies to the flesh of carrion.

Slaughter of non-permitted animals: Correct slaughtering does not change anything in the case of animals which it is not permitted to eat, according to ash-Shāfi'ī and Aḥmad. Even if they are slaughtered, they are simply carrion. Mālik says that it can be done, except in the case of pigs. He says that when a wild animal or a dog is properly slaughtered, its skin becomes pure and can be sold and *wudū'* can be done from a container made from it, even if it is not tanned. Abū Ḥanīfa says the same and adds that every part of it is pure, except its flesh which is unlawful.

Hair, fur, feathers, teeth etc. of carrion: The hair of carrion is impure according to ash-Shāfi'ī, as is its wool and fur. Mālik says that it is absolutely pure because it is something whose use and lawfulness does not depend on the death of the animal concerned, whether its flesh is eaten or not. He considers dogs' hair and pigs' bristles to be pure, whether the animal is alive or dead. The sound position of Aḥmad is that hair, fur and wool are pure. This is also the school of Abu Hanifa, who says in addition that the horns, teeth, feathers and bones are pure since they have no life. The Imams disagree about the permissibility of using pigs' bristles for sewing. Abū Ḥanīfa and Mālik allow it, ash-Shāfi'ī forbids it and Aḥmad dislikes it, and says he prefers sewing with fibre.

Purity or impurity of dead insects etc: When things which have no breath like bees, ants, beetles, and scorpions die in liquids, they do not make them impure or spoil them, according to Abū Ḥanīfa and Mālik, and remain pure in themselves. The most likely Shāfi'ī position is that they do not make the liquid impure but they become impure in themselves by death. This is also the school of Ahmad. The school of ash-Shāfi'ī regarding worms that infest foodstuffs is that when they die they do not make them impure and it is permitted to eat them. When aquatic animals like frogs die in a little water, they make it impure, except according to Abū Ḥanīfa. Locusts and fish are pure by agreement.

Purity or impurity of human corpses: There are two positions from ash-Shāfi'ī about whether a human being becomes impure when he dies. The soundest is that he is not impure, which is the school of Mālik and Ahmad. Abū Ḥanīfa says that he becomes impure, but is purified by washing. When someone in *janāba*, a menstruating woman, or an idolater puts his hand in a vessel with a little water, the water remains pure by agreement.

Leftover drinking water of animals: The leftover drinking water of dogs and pigs is impure according to Abū Ḥanīfa, as-Shāfi'ī and Ahmad, while what is left over by other animals is pure, but the sounder position of Ahmad is that what is left over by wild beasts is also impure. Mālik says that all leftover water is pure. Three Imams agree that the leftover water of mules and donkeys is pure but not purifying, but it is related from Abū Ḥanīfa that there is doubt about whether it is purifying or not. They agree that the leftover water of cats and smaller creatures is pure. It is related that Abū Ḥanīfa disliked leftover water from cats.

Amount of impurity: The soundest position of the school of ash-Shāfi'ī is that all impurities are the same, whether a little or a lot, and must be removed and may not be ignored unless they are unavoidable, such as the blood of pimples, boils and wounds, the blood of fleas, what is left by flies, the site of cupping, and the mud of the road. This is the school of Mālik, but he considers that a little blood may be overlooked. Abū Ḥanīfa says that the blood of lice,

fleas and bedbugs is pure and considers that other impurities the size of a Baghli dirham or smaller may be overlooked.

Urine and faeces: Wet substances emerging from the intestines are impure, although it is related that Abū Ḥanīfa says that they are pure. Urine and faeces are absolutely impure according to ash-Shāfi'ī. Mālik and Ahmad hold that urine and faeces from animals whose flesh may be eaten are pure. Abū Ḥanīfa says that the droppings of edible birds like pigeons and sparrows are pure. Other bird droppings are impure.

Sperm: Abū Ḥanīfa and Mālik consider human sperm to be impure, and Malik says that it should be washed off with water, whether it is wet or dry. Abū Hanifa says that it should be washed off if wet and scratched off if dry. The soundest Shāfi'ī position is that sperm is absolutely pure, except for that of dogs and pigs. The soundest Hanbalī position is that human sperm is pure.

Dead animals in water: They disagree about *wuḍū'* done with water from a well, from whose water a dead mouse is subsequently removed. Abū Ḥanīfa says that such *wuḍū'* is invalid and that all the prayers done within the previous three days, or the previous day and night, must be repeated. Ash-Shāfi'ī and Ahmad say that if the quantity of water is not large, the prayer should be repeated if it is thought that *wuḍū'* was done after it fell in. If the quantity of water is large and not changed, the prayer does not have to be repeated. If the water is changed, the prayer should be repeated from the moment it changed. The school of Mālik is that if the water's qualities have not changed, it is pure and the prayer does not have to be repeated. If it is not a well, there are two views. Ibn al-Qāsim, Mālik's pupil, says that it is impure.

Causes of breaking wuḍū'

What emerges from the two passages – urine and faeces – breaks *wuḍū'* by consensus. As for unusual substances, like worms from the anus, wind from the front passage, stones, false menstruation and prostatic fluid, they break it, except according to Mālik. Abū Ḥanīfa excepts wind from the front passage, saying that it does not

break it. Sperm breaks it, although a statement of ash-Shāfi'ī says that it does not break wuḍū' but obliges *ghusl*. Abū Ḥanīfa says that all of those things breaks it as does sperm.

Touching one's own genitals: They all agree that touching the genitals with something other than the hand does not break wuḍū'. They disagree about touching the penis with the hand. Abū Ḥanīfa says that it absolutely does not break wuḍū' however you do it. Ash-Shāfi'ī and Mālik say that wuḍū' is broken by touching skin to skin with the front of the hand but not the back. The well-known position of Aḥmad is that either the front or back of the hand breaks it. They agree that someone who touches his testicles, even without a covering, does not have to do wuḍū'. They disagree about touching the opening of the anus. Abū Ḥanīfa and Mālik say that touching it does not break wuḍū'. Ash-Shāfi'ī and Aḥmad say that it does. There is, however, one position from ash-Shāfi'ī and one transmission from Aḥmad that it does not break it.

Touching the genitals of another: As for touching the genitals of another person, ash-Shāfi'ī and Aḥmad say that it breaks the wuḍū' of the one who touches, whether the person touched is a child or an adult, alive or dead. Mālik says that touching a child's genitals does not break wuḍū'. Abū Ḥanīfa says that it does not break wuḍū' in any case. Mālik says it that it breaks the wuḍū' of the one touched, while Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad say that it does not.

Men touching women: They disagree about a man touching a woman. Ash-Shāfi'ī's position is that it breaks wuḍū' in every case when there is no barrier. The sound position of his school is that touching non-marriageable related women is an exception to this. The position of Mālik and Aḥmad is that if the touching is with sexual desire it breaks wuḍū'. Otherwise it does not. The position of Abū Ḥanīfa is that it does not break wuḍū' unless the man has an erection in which case it does. Ash-Shaybānī, Abū Ḥanīfa's student, says that touching does not break wuḍū'. The most likely position of the school of ash-Shāfi'ī is that the person touched is like the toucher, and that is also the position of Mālik.

Sleeping: They all agree that sleeping lying down and reclining breaks wuḍū'. They disagree about the one who falls asleep in one of the positions of the prayer. Abū Ḥanīfa says that doing so does not break wuḍū', even if one sleeps for a long time. If one falls on one's side or lies down, it breaks it. Mālik says that falling asleep breaks wuḍū' in the bowing and prostration positions if the sleep is long but not in the standing or sitting positions. Ash-Shāfi'ī's new school is that if someone sleeps while firmly seated, that does not break wuḍū'. Otherwise it does. His old position was that sleeping does not break wuḍū' in any part of the prayer. Aḥmad has various positions. The preferred one is that if the person standing, sitting, bowing and prostrating sleeps a long time, he must do wuḍū'.

Discharges from other passages: Mālik and ash-Shāfi'ī say that there is no wuḍū' for any impurity which comes from other than the normal passages, such as blood from a nose-bleed or cupping. Abū Ḥanīfa says that someone is obliged to do wuḍū' for blood if it flows and vomit if it fills the mouth. Aḥmad says that if there is a lot of blood or vomit, it breaks wuḍū' but if there is only a little there are two positions.

Laughter and eating in the prayer: Loud laughter in the prayer invalidates the prayer by agreement. Mālik, ash-Shāfi'ī and Aḥmad say that it does not break wuḍū', while Abū Ḥanīfa says that it does. There is consensus that there is no wuḍū' on account of what fire has touched, such as cooked food and bread. It is related that some of the Companions, like Ibn 'Umar, Abū Hurayra, and Zayd ibn Thābit made wuḍū' obligatory on account of such things. Eating the meat of slaughtered animals does not break wuḍū' in the new school of ash-Shāfi'ī and that of Abū Ḥanīfa and Mālik. Aḥmad says that it breaks it. Washing a corpse does not break wuḍū', except in the opinion of Aḥmad.

Doubt about wuḍū': They all agree that someone who is certain about having done wuḍū' and unsure about having broken it remains pure, except Mālik, whose school's view is that significant doubt necessitates doing wuḍū'.

Touching the Qur'an: There is consensus that someone who is not in wuḍū' is not permitted to touch a copy of the Qur'an or carry it,

although they say that it is permitted to carry it with a cover or a strap except for ash-Shāfi'ī who permits it to be carried in a container and its pages to be turned with a stick.

Direction while relieving oneself: Facing or turning one's back to *qibla* while relieving oneself outdoors is unlawful according to ash-Shāfi'ī and Mālik and the most well-known position of Aḥmad. Abū Ḥanīfa and Aḥmad state that it is disliked both outdoors and in houses.

Cleaning oneself in the lavatory: Ash-Shāfi'ī and Aḥmad consider it obligatory to clean oneself with water, but it is reported from Mālik that if someone prays without having used water in the lavatory, his prayer is still valid. Abū Ḥanīfa says that it is *sunna* and not mandatory. That is also reported from Mālik. Abū Ḥanīfa says that if someone prays without cleaning himself with water, his prayer is valid, but he considers that all impurities larger than the size of a Baghli dirham must be removed. Ash-Shāfi'ī and Aḥmad say that it is not permitted to use fewer than three stones for cleaning oneself, even if cleaning is achieved by fewer than that. Abū Ḥanīfa and Mālik say that what is considered is cleanliness. If that is achieved with one stone, it is not recommended to exceed it. Ash-Shāfi'ī and Aḥmad say that it is not permitted to use bones or dung. Abū Ḥanīfa and Mālik say that it is, but that it is recommended not to use them.

Wuḍū'

Intention: It is agreed that an intention is obligatory for all the acts of purification: *ghusl*, *wuḍū'* and *tayammum*. Purification is only valid with it. Abū Ḥanīfa, however, is said to have said that the only one that needs an intention is *tayammum*. The place of the intention is the heart but it is best to articulate with the tongue what the heart intends, although Mālik says that it is disliked to articulate it out-loud. It is agreed that it is enough if the intention is confined to the heart.

The basmala, washing the hands etc. : The *basmala* is recommended when doing *wuḍū'* but not obligatory. Washing the hands

before purification is recommended but not obligatory. It is related that Ahmad made it obligatory after sleep at night but not in the day. Snuffing water up the nose and blowing it out are *sunnas* in *wuḍū'* and *ghusl*, according to Mālik and ash-Shāfi'ī. Aḥmad says that they are obligatory. All agree that making water penetrate a thick beard in *wuḍū'* is *sunna*.

Face and arms: The face consists of everything between the normal hair roots and the end of the beard and from ear to ear with three of the Imams. Mālik says that what is between the hair of the beard and the ear is not part of the face and does not have to be washed in *wuḍū'*. The elbows are part of the arms in *wuḍū'*.

Wiping the head: Ash-Shāfi'ī says that wiping the head in *wuḍū'* in any manner which might be called "wiping" is enough. Mālik and Aḥmad say that the whole head must be wiped. Abū Ḥanīfa says that a quarter of the head must be wiped with at least three fingers, so that even if the entire head is wiped with two fingers, it is not enough. Wiping over the turban rather than the head, without an excuse, is not permitted by Abū Ḥanīfa, Mālik and ash-Shāfi'ī. Aḥmad says that it is allowed, provided that some of the turban is under the jaw. He says that a woman can wipe over a scarf tied under her throat. Abū Ḥanīfa, Mālik and Aḥmad say that it is *sunna* to wipe the head once. Ash-Shāfi'ī says that it should be wiped three times.

Ears and neck: The ears are part of the head according to Abū Ḥanīfa, Mālik and Aḥmad and it is *sunna* to wipe them as well. Ash-Shāfi'ī says that wiping the ears with new water after wiping the head is *sunna*. Abū Ḥanīfa, Mālik and Aḥmad, in one statement, say that it is *sunna* to do it once. Ash-Shāfi'ī says that it should be done three times, which is one view of Aḥmad. Abū Ḥanīfa says that wiping the neck is supererogatory in *wuḍū'*. Mālik and ash-Shāfi'ī say that it is not *sunna*, although some Shāfi'ites and Ḥanbalis say that it is.

Feet: It is generally agreed that it is obligatory to wash the feet in *wuḍū'*, given the ability to do so. Aḥmad is reported as saying that it is permitted to wipe the feet and that a man can choose between washing and wiping the feet.

Order and continuity: Abū Ḥanīfa and Mālik say that the order in *wuḍū'* is not obligatory, but ash-Shāfi'ī and Aḥmad say that it is. Continuity in *wuḍū'* is *sunna* with Abū Ḥanīfa but Mālik says that it is mandatory. Ash-Shāfi'ī has two positions, the sounder of which is that it is *sunna*. The well-known position of Aḥmad is that it is mandatory. They agree that it is not recommended to dry the limbs after *wuḍū'*, but nor is it disliked. When in *wuḍū'*, you can pray whatever prayers you wish as long as *wuḍū'* is not broken.

Ghusl

Causes of ghusl: The Imams agree that when a man has sexual intercourse with a woman and the two private parts meet, *ghusl* becomes obligatory for both of them, even if the man does not ejaculate. Emission of sperm obliges *ghusl* with ash-Shāfi'ī, even if it is not accompanied with pleasure. Abū Ḥanīfa and Mālik say that *ghusl* is only obligatory for sperm issuing with pleasure. If someone in *janāba* washes and then sperm comes from them after washing, Abū Ḥanīfa and Aḥmad say that it counts the same as urine and they do not have to do *ghusl* again. Ash-Shāfi'ī says that *ghusl* is absolutely obliged. Mālik says that it is absolutely not. Ash-Shāfi'ī says that if sperm emerges without spurting, *ghusl* is obliged, but Abū Ḥanīfa, Mālik and Aḥmad say that it is not necessary. *Ghusl* is only obligatory when sperm actually emerges from the penis, according to all except for Aḥmad who says that if someone is aware of or sees or feels the movement of sperm in the urethra, he must do a *ghusl*, even if it does not emerge. When an unbeliever becomes Muslim, he must do a *ghusl* according to Mālik and Aḥmad. Abū Ḥanīfa and ash-Shāfi'ī say that it is only recommended.

Rubbing: It is recommended to rub over the whole body in washing for *janāba*, except according to Mālik who makes it obligatory.

Leftover water: It is agreed that there is no harm in doing *wuḍū'* and *ghusl* with water left by someone in *janāba* or menstruating, but Aḥmad says that a man is not permitted to do *wuḍū'* from the leftover water of a woman he is not normally allowed to see. Aḥmad agrees that it is permitted for a woman to do *wuḍū'* from the leftover

water of a man or woman. If a woman starts to menstruate when she is in *janāba*, it is agreed that one *ghusl* is enough to purify her from both menstruation and *janāba*.

What is forbidden in janāba: By consensus, someone in *janāba* is forbidden to carry a copy of the Qur'an and touch it and, according to ash-Shāfi'ī and Aḥmad, to recite any amount of the Qur'an. Abū Ḥanīfa permits the recitation of part of an *āyat* and Mālik permits the recitation of one or two *āyats*.

Tayammum

Tayammum with earth in the absence of water, or when there is fear of using it, is permitted by consensus.

What constitutes earth: The Imams disagree about what constitutes earth. Ash-Shāfi'ī and Aḥmad say that it is dirt and it is only permitted to do *tayammum* with pure earth or sand which has some dust in it. Abū Ḥanīfa and Mālik say that it means the earth's surface and so *tayammum* can be done with earth and parts of it, even with a stone with no dirt on it or dustless sand.

Seeking water: Mālik and ash-Shāfi'ī say that seeking water is a precondition for *tayammum*. Abū Ḥanīfa says that it is not and Aḥmad has two positions, the soundest of which is that seeking it is necessary. They agree that it is permitted for someone in *janāba* to do *tayammum*, and for travellers when they have water but fear thirst and so keep it for drinking.

Hands and arms: In *tayammum*, the hands should be wiped to the elbows, according to Abū Ḥanīfa and the new school of ash-Shāfi'ī. Mālik and Abū Ḥanīfa say that it is recommended to wipe to the elbows and mandatory to the wrists.

Finding water: They agree that when someone does *tayammum* and then finds water before beginning the prayer, his *tayammum* is invalid and he must use the water. They disagree about when someone finds water after starting the prayer. Ash-Shāfi'ī says that if his prayer is such that its obligation may be performed by the use of

tayammum, as when he is travelling, his prayer is not invalidated and he continues, but it is better to stop and do *wuḍū'*. Malik says that he should continue and not stop, as the prayer is sound. Abū Ḥanīfa says that his *tayammum* is invalid and he must stop the prayer and use water, except in the case of the funeral and 'id prayers. Aḥmad says that his prayer in that situation is absolutely invalid. They agree that if someone finds water after having finished the prayer, he does not have to repeat it, even if time remains.

Duration of *tayammum*: Ash-Shāfi'ī, Mālik and Aḥmad say that is not permitted to combine two *farḍ* prayers with one *tayammum*, whether at home or travelling. Abū Ḥanīfa says that *tayammum* is like *wuḍū'* and lasts until it is broken or water is found. *Tayammum* is not permitted before the time of the prayer by Mālik, ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that it is permitted.

Intention: They agree that intention is a precondition for the validity of *tayammum* and agree that *tayammum* does not remove impurity, but only allows the prayer. Abū Ḥanīfa is reported to have said that it does remove impurity and that the one who does *tayammum* is permitted to lead both those in *wudu'* and those in *tayammum*.

Illness: There is no dispute that if someone fears death from the use of water, he is permitted not to use it and to do *tayammum*. If someone fears that his illness will get worse, that his recovery will be delayed or that non-fatal illness will result, Mālik and Abū Ḥanīfa permit him to do *tayammum*. This is also the preferred view of ash-Shāfi'ī. Aḥmad says that he should wash what he can and do *tayammum* for the rest.

Wounds and broken limbs: If someone has a wound or a break or injury to one of his limbs and has a splint on it and fears death if he removes it, ash-Shāfi'ī says that he can wipe over the splint and add *tayammum* to the wiping. Abū Ḥanīfa and Mālik say that if part of the body is sound and part injured, if most of it is sound, everything should be washed except that limb, although it is recommended to wipe it with water. If the majority is affected, *tayammum* should be done and the injured limb should not be wiped. Aḥmad says that the sound part should be washed and *tayammum* done for the injury. If

someone wipes over a splint and prays, the prayer should not be repeated except, according to ash-Shāfi'ī, if the splint was put on in a state of impurity and it is impossible to remove it.

Imprisonment: If someone is imprisoned and cannot get water, he should do *tayammum* and pray, in the view of Mālik and Aḥmad, and he does not have to repeat the prayer. There are two reports from Abū Ḥanīfa: the first is that he should not pray until he leaves prison or finds water and the second is that he should pray and repeat the prayer, which is also the position of ash-Shāfi'ī.

Lack of water or earth: If someone cannot find any water or earth and the time for prayer comes, Abū Ḥanīfa says that he should not pray until he finds water or earth. There are three positions transmitted from Mālik. One is the same as that of Abū Ḥanīfa, the second is that he should pray as he is and repeat the prayer when he finds water or earth, which is the preferred position of ash-Shāfi'ī and one view reported from Aḥmad. Aḥmad has a second position, which is that he should pray and does not have to repeat the prayer and that is also the third position of Mālik. If there is some impurity, on the body and no water can be found to remove it, *tayammum* should be done for it in the same way as for ritual impurity, and Aḥmad says that there is no need to repeat the prayer. Abū Ḥanīfa says the prayer should not be done until something is found to remove an impurity. Ash-Shāfi'ī says that you should pray and then repeat the prayer.

Method: The imams disagree about how *tayammum* should be performed. Abū Ḥanīfa says that the earth should be struck twice: one for the face and one for the hands and arms. The soundest Shāfi'ī position is like that of Abū Ḥanīfa. Mālik and Aḥmad say that it is enough to strike the earth once for both the face and hands, using the inside of the fingers for the face and inside of the palms for the hands, although Mālik prefers two strikes.

Wiping over leather socks

Wiping over leather socks on a journey is permitted by the consensus of the Muslims, and no one denies that except the Kharijites.

The Imams agree that it is permitted while resident except for one report from Mālik.

Time limit: Wiping over socks has a time limit of three days and nights for the traveller and a day and a night for the person resident, in the view of Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad. Mālik says that there is no time limit, and that anyone wearing them can wipe over them, whether travelling or resident, as long as it seems best to him not to remove them or until he becomes *junub*.

What is wiped: The *sunna* is to wipe the tops and bottoms of the socks, while Aḥmad says that the *sunna* is to only wipe the top. By consensus, it is agreed that if someone only wipes the top, it is enough, but if he only wipes the bottom, it is not enough. They differ about how the wiping should be done. Abū Ḥanīfa says that it is only acceptable with three or more fingers. Ash-Shāfi'ī says anything that can be termed wiping is sufficient. Aḥmad says that wiping most is enough, while Mālik thinks that doing it in full is obligatory. They agree that wiping the socks once is enough and that when one sock is removed, the other must be removed as well.

Holes: If there is a small hole in the socks below the ankles so that a small amount of foot shows through, wiping is not permitted in the new school of ash-Shāfi'ī and that of Aḥmad. Mālik says that it is permitted to wipe over them as long as the hole is not large. Abū Ḥanīfa says that if the hole is the size of three fingers, it is not permitted. If it is less, it is permitted.

Removal: If someone removes the socks while he is still in *wuḍū'* through wiping, Abū Ḥanīfa and the predominant view of ash-Shāfi'ī is that he should wash his feet, whether it is a long or short time since they have been removed. Aḥmad and Mālik say that he must wash his feet immediately.

Menstruation

The Imams agree that the obligation of prayer is cancelled for menstruating women while they are menstruating and that they do

not have to make up the prayers they miss. It is *ḥarām* for them to do *tawāf* of the House and to remain in a mosque, and it is *ḥarām* to have intercourse with them until their period ends.

Minimum and maximum age: The minimum age at which a girl can menstruate according to Mālik, ash-Shāfi'ī and Aḥmad is nine, and that is the age that Abū Ḥanīfa prefers. They disagree about whether there is a set time for the end of menstruation or not. Abū Ḥanīfa says sixty and elsewhere fifty-five. Mālik and ash-Shāfi'ī say that it has no limit and one refers to the norms of different lands which vary according to hot and cold climates. Aḥmad has three positions, ranging from fifty to sixty.

Minimum and maximum length: Ash-Shāfi'ī and Aḥmad consider the minimum length of menstruation to be a day and a night, and its maximum to be fifteen days and nights. Abū Ḥanīfa says that its minimum is three days and its maximum ten days. Mālik says that it has no minimum – it can be as little as an hour – and that its maximum is fifteen days. The minimum period of purity between two periods is fifteen days, according to Abū Ḥanīfa and ash-Shāfi'ī, while Aḥmad says thirteen days. Malik says that he does not know a specific time between two periods but some of his people say ten days. All say there is no limit to its maximum.

Sexual relations during and after menstruation: A menstruating woman may be enjoyed only above the waist-wrapper. What is between the navel and knees is haram. This is the position of Abū Ḥanīfa, Mālik and ash-Shāfi'ī, while Aḥmad, ash-Shaybānī and some Mālikīs and Shāfi'īs say that enjoyment and intercourse is permitted except for the vagina itself. If a man does have full sexual intercourse, Abū Ḥanīfa and ash-Shāfi'ī, in the new school, and Aḥmad say that he asks Allah's forgiveness, repents and owes nothing, but ash-Shāfi'ī recommends that he give a dinar for sexual intercourse in the vagina and half a dinar for the anus. When menstruation stops, it is not permitted to have intercourse with a woman until she has a *ghusl*, even if the maximum length has passed. There is almost complete consensus about this. Abū Ḥanīfa says that if the maximum time has passed, a man can

have intercourse before *ghusl*. If it stops before the maximum of menstruation, it is not permitted until she has a *ghusl* or the time of a prayer has come and gone. Mālik says that it is not permitted to have intercourse with her until she has a *ghusl*.

Menstruation in pregnancy: The Imams disagree about whether a pregnant woman can menstruate. Abū Ḥanīfa and Aḥmad say that she cannot. Mālik says she can. Two things are reported from ash-Shāfi'ī, the most likely being that she can.

False menstruation: They disagree about the case of a woman with false menstruation. Abū Ḥanīfa says that she goes by her usual cycle if she has one, otherwise she goes by the minimum. Mālik says that the usual cycle is not a factor, but discrimination is. If she can distinguish whether she is menstruating or not, she goes by that. Otherwise, it is as if she does not menstruate and so she prays. One well-known position is that she waits for the maximum length of menstruation. Ash-Shāfi'ī says that if she has a usual cycle but can distinguish whether she is menstruating or not, she should prefer discrimination to her usual cycle. If she cannot tell the difference, she should go by her usual cycle. Aḥmad says that if she has a usual cycle and can distinguish, she should go by her usual cycle. If she has no usual cycle, then she distinguishes. If neither applies, then either the period continues or she waits to the end of the maximum. It is permitted to have sexual intercourse with a woman suffering from false menstruation according to Abū Ḥanīfa, ash-Shāfi'ī and Mālik as she prays and fasts. Aḥmad says that it is not permitted in the vagina, unless it is feared that her husband will fall into adultery, and then it is permitted.

Bleeding after childbirth: They agree that what is forbidden to a menstruating woman is also forbidden to a woman bleeding from childbirth. They disagree about the maximum length of such bleeding. Abū Ḥanīfa and Aḥmad say forty days, as does one report from Mālik. Mālik and ash-Shāfi'ī say that it is sixty days. The three say that when it reaches the maximum, it is not disliked to have sexual intercourse with her. Aḥmad says that there can be no sexual intercourse with her until the full period of forty days have passed.

Chapter Two

The Prayer

They agree that the prayer is one of the five pillars of Islam mentioned in the words of the Prophet, "Islam is based on five." The prescribed prayers are five in a twenty-four hour day. They comprise seventeen *rak'ats* which Allah has prescribed for every sane adult Muslim man and every sane adult Muslim woman, free of menstruation and lochia. This obligation is only cancelled by death although Abū Ḥanīfa says that if someone is unable even to indicate with his head, the obligation is removed from him.

Unconsciousness: If someone becomes unconscious through illness or through any cause which is not forbidden in the *Sharī'a*, he does not have to make up the prayers he missed while unconscious, according to Mālik and ash-Shāfi'ī. Abū Ḥanīfa says that if it is twenty-four hours or less, he must make them up. If it is more, he does not have to. Aḥmad says that he must make them up, however long the period of unconsciousness lasts.

Denial of the prayer: They all agree that all legally responsible adult Muslims who deny that the prayer is an obligation are unbelievers and should be killed for disbelief. They disagree about those who abandon it, without denying it out of negligence. Mālik and ash-Shāfi'ī say they should be killed, the sound position being that they are killed as a *ḥadd*, not for disbelief. All the rulings which apply to Muslims apply to such people after their execution: *ghusl*, prayer, burial and inheritance. The view of ash-Shāfi'ī is that someone should be killed after missing even one obligatory prayer, provided, of course, that the time of that prayer has completely passed. They are first asked to repent and if they do not, they are killed. Abū Ḥanīfa says they should be imprisoned until they pray. Two positions are recorded from Aḥmad.

Prayer by proxy and of unbelievers: They agree that the obligatory prayer is not valid when done by proxy. If an unbeliever

prays, is he considered a Muslim? Abū Ḥanīfa says that if he prays in a mosque, in a group or alone, he is judged to be a Muslim. Ash-Shāfi'ī says that he is only judged to be Muslim if he prays outside the lands of Islam. Mālik says that if he prays on a journey where he fears for himself, he is not judged to be a Muslim, but if he prays when he is safe, he is judged to be a Muslim. Aḥmad says that if someone prays, he is judged to be a Muslim, whether in a group or alone, in a mosque or in a house or anywhere.

The Adhān

Legal status of adhān and iqāma: They agree that the *adhān* and *iqāma* are prescribed for the five prayers and *Jumu'a*, but disagree about their legal status. Abū Ḥanīfa, Mālik and ash-Shāfi'ī say that they are *sunna*, but Aḥmad says that they are a *farḍ kifāya* for the people of cities. They agree that the *adhan* is neither prescribed nor *sunna* for women. Is the *iqāma sunna* for them or not? Abū Ḥanīfa, Mālik and Aḥmad say that it is not *sunna*. Ash-Shāfi'ī says that it is *sunna*. Abū Ḥanīfa says that there should be an *adhān* and *iqāma* for missed prayers. Mālik and ash-Shāfi'ī say that there should be an *iqāma* but no *adhān*. Aḥmad says that there should be an *adhān* for the first and an *iqāma* for the rest. They agree that if the people of a city agree to abandon the *adhān* and *iqāma*, they should be killed because the *adhān* is one of the tokens of Islam which it is not permitted to abandon.

Form of the adhān: The form of the *adhān* is well-known, but Mālik says that the *takbīr* is only said twice at the beginning. They disagree about the form of the *iqāma*. Abū Ḥanīfa says that its elements are repeated twice as they are in the *adhān*, but Mālik says that the elements of the *iqāma* are only said once each. Ash-Shāfi'ī and Ahmad say that they are all said once only except for the expression of *iqāma* itself which is said twice. It is *sunna* for the *mu'adhdhin* to repeat the double *shahāda* in a low voice before calling it out loud in the *adhān*, except in the case of Abū Ḥanīfa.

Time of adhān: The *adhān* may not be called before the time of the prayer, except in the case of *Ṣubḥ* when it is permitted to give the

adhān for it before *Fajr*. Aḥmād says that it is disliked to give it before *Fajr*. Another version is that it is only disliked in Ramaḍān.

Additional elements: They agree that statement "the prayer is better than sleep" is prescribed only in the *adhan* for *Ṣubḥ*. It is *sunna* with three Imams and the new school of ash-Shāfi'ī. Three say that it is said twice after "Come to Success". Abū Ḥanīfa says it is said after the *adhān* and is only prescribed for *Ṣubḥ*. They agree that the *sunna* for the 'īd prayers, eclipse and rain prayers is to call only, "The prayer is gathered" (*Aṣ-ṣalātu jāmi'a*).

Who calls the adhān: They agree that only a sane Muslim man may call the *adhān* for public prayer. A woman may not give the *adhān* for men, but the *adhān* of a boy with discrimination is considered permissible. All except Ahmad accept the *adhān* of someone in *janāba*. They disagree about taking a wage for calling the *adhān*. Abū Ḥanīfa and Aḥmad say that it is not permitted. Mālik and most Shāfi'ites say that it is permitted. If it is mispronounced, the *adhān* is still valid.

Times of Prayer

Zuḥr: They all agree that the beginning of the time of *Zuḥr* is after the sun has reached its zenith and that it cannot be prayed before that. Ash-Shāfi'ī and Mālik give a wide spread of time for the prayer to be said: up until the shadow of a thing is equal to it, which they consider to be the end of the preferred time. The school of Abū Ḥanīfa is that the obligation of *Zuḥr* is connected to the end of its time and praying at the beginning of the time is voluntary.

'Aṣr: The end of the time of *Zuḥr* is the beginning of the time of 'Aṣr so that they overlap. If someone does not pray *Zuḥr* until the shadow of a thing is equal to it, he can begin it without incurring a wrong action. Ash-Shāfi'ī says that if someone begins *Zuḥr* and finishes it when the shadow of a thing is equal to it, he has done the prayer in its time. After that it is in the time of 'Aṣr. The Ḥanafīs say that the beginning of the time of 'Aṣr is when the shadow of a thing is twice its length and the end of the time is sunset.

Maghrib and 'Ishā': Mālik says that the time of *Maghrib* is sunset and it should not be delayed. Ash-Shāfi'ī has two positions, the old one being that the end of its time is when the red twilight disappears. Abū Ḥanīfa and Aḥmad say that it has two times. When the redness goes, the time of 'Ishā' has begun according to ash-Shāfi'ī and Mālik, whereas Abū Ḥanīfa and Aḥmad say that it is when the white twilight which follows the red has disappeared.

Ṣubḥ: They agree that the beginning of the time of *Ṣubḥ* is the rising of the second or true dawn whose light spreads on the horizon and is not followed by darkness. The end of its preferred time is when it becomes light. The end of the permitted time is sunrise. Mālik, ash-Shāfi'ī and Aḥmad say it should be prayed while it is still dark. Abū Ḥanīfa says that it should be prayed when it is getting light and if that time is missed then is better to pray when it is light than while it is still dark, except at Muzdalifa where darkness is better. Aḥmad considers the state of the people praying. If darkness is hard on them then they should pray after it has got light.

Delaying the prayer: Delaying *Zuhr* when the heat is intense is better when it is prayed in communal mosques. The soundest Shāfi'ite position is that this may only be done in hot lands and in a communal mosque. It is better to pray 'Aṣr early in its time, except in the view of Abū Ḥanīfa. It is better to delay 'Ishā', except in the view of ash-Shāfi'ī.

The middle prayer: They disagree about what constitutes the "middle prayer". Abū Ḥanīfa and Aḥmad say it is 'Aṣr. Mālik and ash-Shāfi'ī say *Ṣubḥ*. The later Shāfi'ites say it is 'Aṣr.

Preconditions, pillars and description of the prayer

The Imams agree that the prayer has preconditions which must be fulfilled to make it valid. They are four: *wuḍū'* with water or doing *tayammum* when water is lacking; standing in a pure place, facing *qibla* when it is possible to do so; and knowledge that the time has come. They disagree about whether concealing the private parts is also a precondition. Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad say

that it is a fifth precondition. The Mālikīs disagree, some of them saying that it is one of the preconditions but is itself conditional on ability and awareness, so that if someone deliberately prays with his private parts uncovered when he has the ability to cover them, his prayer is invalid. Others of them say that it is an obligation in itself, but not a precondition for the validity of the prayer. If someone prays deliberately with his private parts exposed, he is a rebel. Later Mālikīs say that the prayer is not valid at all if the private parts are exposed.

Pillars of the prayer: They all agree that the prayer has pillars and are agreed on seven of them: intention; *takbīr al-iḥrām*; standing when able; recitation; *rukū'*; *sujūd*; and sitting at the end of the prayer. They disagree about other pillars and whether these preconditions and pillars are joined to the prayer or distinct from it. So the intention of the prayer is an obligation by consensus, but Abū Ḥanīfa and Aḥmad say that it can precede the *takbīr* by a short time, whereas Mālik and ash-Shāfi'ī say that it must accompany the *takbīr al-iḥrām* and cannot be before or after it.

Takbīr al-iḥrām: They agree that the *takbīr al-iḥrām* is one of the obligations of the prayer and that it is only valid when it is actually articulated. They agree that the state of *iḥrām* in the prayer occurs when the person praying says, "Allāhu akbar". But can anything else take its place? Abū Ḥanīfa says that any expression which indicates high esteem is sufficient to fulfil the obligation. Ash-Shāfi'ī says that it requires the actual words, "Allāhu akbar", as do Mālik and Aḥmad. If someone speaks good Arabic and says the *takbīr* in another language, the prayer is generally considered invalid, although Abū Ḥanīfa says that it is not. There is consensus that raising the hands while pronouncing the *takbīr al-iḥrām* is *sunna*. They disagree about how far they should be raised. Abū Ḥanīfa says level with the ears while Mālik and ash-Shāfi'ī say to the shoulders. There are three statements from Aḥmad: to the ears, the shoulders, and choice. Raising the hands in the *takbīrs* of *rukū'* and rising from it is *sunna*, according to ash-Shāfi'ī and Aḥmad, but Abū Ḥanīfa says that it is not.

Standing: They agree that the standing position is one of the obligations of the prescribed prayer given the ability to do it. If someone fails to do it when he is able to, his prayer is not valid. If someone is unable to stand, he may pray sitting. There are two statements from ash-Shāfi'ī about how this sitting should be done. One is cross-legged and that is also related from Mālik, Aḥmad and is one version of Abū Ḥanīfa's position, and the second is *iftirāsh* (sitting on the left foot with the right foot upright), which is considered the sounder Shāfi'ī view. Abū Ḥanīfa also says that you may sit however you wish. If sitting is not possible, then the position of ash-Shāfi'ī is that you should lie down on your right side facing *qibla*, and if you cannot, then on your back with your feet toward *qibla*, which is also what Mālik and Aḥmad say. Abū Ḥanīfa says that this is so that it is possible to nod towards *qibla* with the head to indicate bowing and prostrating. If that cannot be done with the head, it should be done with the eyes. Abū Hanifa says that when things reach that state, the obligation of the prayer falls away. Someone praying on a ship must stand for the obligatory prayer as long as he does not fear drowning or vertigo. Abū Ḥanīfa says that it is not obligatory to stand in that situation.

Position of the hands: They agree that it is *sunna* to put the right hand on the left in the prayer (*qabḍ*) except for the famous transmission from Mālik that the hands should hang down by the sides (*sadl*). They disagree about the exact place that the hands should be placed. Abū Ḥanīfa says under the navel. Mālik and ash-Shāfi'ī say under the chest and above the navel. There are two reports from Aḥmad, the most famous of which is the same as Abū Ḥanīfa. The *sunna* with three is that the person praying should look at the place where he will prostrate.

Istiftāḥ : Three agree that the *istiftāḥ* (opening) *du'ā'* in the prayer is *sunna*. Mālik says that it is not and that the person praying simply says the *takbīr* and begin the recitation. Abū Ḥanīfa and Aḥmad say that the form of the *istiftāḥ* is: "Glory be to You, O Allah, and by Your praise. Blessed is Your Name and exalted is Your greatness. There is no god but You." Its form with ash-Shāfi'ī is, "I turn my

face to the One who created the heavens and the earth, a natural believer..." (6:49)

Recitation: They disagree about seeking refuge before reciting. Abū Ḥanīfa says that it should be done in the first *rak'at*. Ash-Shāfi'ī says that it should be done in every *rak'at*. Mālik says it is not done in the prescribed prayers. They agree that the recitation is obligatory for the Imam and anyone praying alone in the two *rak'ats* of *Fajr* and in the first two *rak'ats* of every other prayer. They disagree about it at other times. Ash-Shāfi'ī and Aḥmad say that it is mandatory in every *rak'at* of all five prescribed prayers. Abū Ḥanīfa says that recitation is only obligatory in the first two *rak'ats*. Two things are reported from Mālik, one is the same as the view of ash-Shāfi'ī and Aḥmad, and the other is that the prostration of forgetfulness should be done for omitting the recitation in one *rak'at* of the prayer, except in the case of *Ṣubḥ*, when the omission of recitation in one of its two *rak'ats* means it must be done again.

Recitation following an imam: They disagree about the obligation of recitation for those following the imam. Abū Ḥanīfa says that it is not obligatory whether the imam recites aloud or silently, but that it is *sunna* to recite behind him. Mālik and Aḥmad say that anyone following an Imam does not have to recite at all. Mālik dislikes those following to recite when the prayer is outloud, whether they can hear the recitation of the Imam or not. Aḥmad made a distinction and recommended recitation when the Imam is silent. Ash-Shāfi'ī says that it is obligatory for those following in the silent prayer and the preferred of his two positions is that it is also obligatory for those following when the prayer is outloud.

What should be recited: They disagree about what should be recited. Mālik, ash-Shāfi'ī and Aḥmad say that the *Fātiḥa* must be recited. Abū Ḥanīfa says that the prayer is sound if something else is recited. They disagree about the *basmala*. Ash-Shāfi'ī and Aḥmad say that it is one of *āyats* of the *Fātiḥa* which must be recited with it. Abū Ḥanīfa and Mālik say that it is not part of the *Fātiḥa* and is not obligatory. The school of ash-Shāfi'ī is that the *basmala* is recited outloud whereas Abū Ḥanīfa and Aḥmad say it should be done

silently. Mālik says that it is recommended to omit it and begin directly with 'Praise be to Allah'.

Inability to recite: They disagree about someone who can recite neither the *Fātiḥa* nor any other part of the Qur'an. Abū Ḥanīfa and Mālik say that he should stand for the length of time it would take to recite the *Fātiḥa*. Ash-Shāfi'ī says that he should glorify for that length of time and that recitation in Persian (or any other language) is not allowed. Abū Ḥanīfa says it is permissible to recite in Arabic or in Persian. Abū Yūsuf and ash-Shaybānī say that if he can recite the *Fātiḥa* well in Arabic, no other language is allowed, but if he cannot recite it proficiently, he should recite in his own language. Abū Ḥanīfa says that reading from a Qur'an in the prayer invalidates it. Ash-Shāfi'ī says that it is permitted. There are two reports from Aḥmad, one the same as ash-Shāfi'ī and the other that it is permitted in the *nāfila* but not the obligatory, which is the position of Mālik.

Saying *āmīn*: They disagree about saying *āmīn* after the *Fātiḥa*. The well-known position of Abū Ḥanīfa is that it should not be said outloud, either by the Imam or anyone following. Mālik says that those following say it outloud and there are two reports about what the imam does. Ash-Shāfi'ī says that the *imam* says it outloud and there are two positions about the followers, the soundest of which is that they say it outloud. Aḥmad says that both say it outloud.

***Sūra* after the *Fātiḥa*:** They agree that it is *sunna* to recite a *sūra* after the *Fātiḥa* in both *rak'ats* of the *Ṣubḥ* prayer and in the first two *rak'ats* of the four *rak'at* prayers and *Maghrib*. Is it *sunna* in other *rak'ats*? Three say that it is not and there are two positions from ash-Shāfi'ī, the most likely being that it is not *sunna*. They agree that reciting it outloud in the prayers which are outloud and silent in those which are silent is *sunna*. If someone recites it outloud intentionally in a silent prayer or silently in one which should be outloud, it does not invalidate the prayer, but it means that the *sunna* has been abandoned. There is one Mālikī position that if someone does that deliberately, his prayer is invalid. They disagree about whether someone praying alone should recite outloud. Mālik and ash-Shāfi'ī say that it is recommended for him to do so. The

well-known position from Aḥmad is that it is not recommended. Abū Ḥanīfa says that he can choose either.

***Rukū'* and *sujūd*:** There is consensus that *rukū'* and *sujūd* are two obligations of the prayer. It is prescribed to bow until the palms reach the knees and it is *sunna* to say the *takbīr* while doing it. They disagree about the necessity of coming to rest in *sujūd* and *rukū'*. Abū Ḥanīfa says that it is not obligatory but *sunna*. Mālik, ash-Shāfi'ī and Aḥmad say that it is obligatory in the same way that the positions of *sujūd* and *rukū'* are obligatory. They agree that when you bow, the *sunna* is to place your hands on your knees and not between the knees. Glorification in *sujūd* and *rukū'* is *sunna*. Aḥmad says that it is mandatory in *sujūd* and *rukū'* once. Similarly he says that glorification and supplication between the two *sajdas* may only be omitted out of forgetfulness or the prayer is invalidated. The *sunna* is to glorify three times.

Rising from *rukū'*: Rising from *rukū'* and standing up straight again is obligatory in the view of ash-Shāfi'ī and it is the well-known position in the school of Mālik. Abū Ḥanīfa says that it is not obligatory but that it is disliked to go directly from *rukū'* to *sujūd*. Ash-Shāfi'ī says that the *sunna* is that the imam, those following him, or someone praying alone should say when rising from *rukū'*, "Allah hears whoever praises Him. Our Lord, praise is Yours in an amount as great as the heavens and the earth and in amount as great as anything You wish after that." The other three say that the imam does not say more than "Allah hears whoever praises Him," and the follower, "Our Lord, praise is yours." Mālik says that someone praying alone can add to that if he wants to.

Parameters of *sujūd*: They agree that *sujūd* is on seven points: the face, knees, hands, and toes. They disagree about what is obligatory. Abū Ḥanīfa says that the forehead and nose must touch the ground. Ash-Shāfi'ī says that only the forehead is obligatory. As regards the rest of the points, Aḥmad says that they are obligatory except for the nose, although that is disputed. The position of Mālik varies. Ibn al-Qāsim says that the forehead and nose are obligatory. If they do not both touch the ground, it is recommended to repeat the prayer within the time, but if the time has gone, there is no need to. They disagree

about someone who prostrates on the coil of his turban. Abū Ḥanīfa, Mālik and Aḥmad say that that is all right. Ash-Shāfi'ī and Aḥmad in another view say that it is necessary for the actual forehead to touch the ground. They disagree about uncovering the hands in *sujūd*. Abū Ḥanīfa and Aḥmad say that it is not obligatory while Mālik says that it is. Ash-Shāfi'ī has two positions, the sounder of which is that it is not obligatory.

Sitting: They disagree about the sitting position between the two *sajdas*. Abū Ḥanīfa says that it is *sunna* while the others say that it is obligatory. Sitting briefly in between them is *sunna* in the sounder of the two positions of ash-Shāfi'ī, while the others say that it is recommended. According to three you should stand from *sujūd*, pushing yourself up with your hands and go down putting your hands down first. Abū Ḥanīfa says that you should not push yourself up with your hands.

Tashahhud: They disagree about the first *tashahhud* and the way of sitting. Three say that the first *tashahhud* is recommended but Aḥmad says that it is mandatory. In the view of ash-Shāfi'ī, it is *sunna* to sit *iftirāsh* (on the left foot) in the first sitting and *tawarruk* (on the left buttock with the left foot under the right leg) in the second. Abū Ḥanīfa says that the *sunna* is to sit *iftirāsh* in both. Mālik says it should be *tawarruk* in both. They agree that all the forms of *tashahhud* reported from the Prophet by the Companions are permitted. Ash-Shāfi'ī and Aḥmad prefer that of Ibn 'Abbās which is "Greetings, blessings and good prayers belong to Allah. Peace be upon you, O Prophet, and the mercy of Allah and His blessings. Peace be upon us and on the righteous slaves of Allah. I testify that there is no god but Allah and I testify that Muḥammad is the Messenger of Allah." Abū Ḥanīfa prefers that of Ibn Mas'ūd which is: "Greetings, prayers and good prayers belong to Allah. Peace be upon you, O Allah, and the mercy of Allah and His blessings..." Mālik prefers that of Ibn 'Umar which is: "Greetings are for Allah and pure things belong to Allah, and good prayers belong to Allah. Peace be upon you, O Prophet, and the mercy of Allah ..." It also contains the words: "I testify that there is no god but Allah and I testify that Muḥammad is His slave and Messenger." As regards

the prayer on the Prophet in the final *tashahhud*, Abū Ḥanīfa and Mālik say it is *sunna*, ash-Shāfi'ī that it is obligatory, and Aḥmad says that the prayer is invalid without it.

The *salām*: The *salām* is prescribed. It is an essential pillar of the prayer in the view of ash-Shāfi'ī, Mālik and Aḥmad but not in the view of Abū Ḥanīfa. Abū Ḥanīfa and Aḥmad say that there are two *taslīms*. Mālik says one. Ash-Shāfi'ī has two views, the sounder of which is that it is two. Mālik, ash-Shāfi'ī and Aḥmad say that the *salām* is part of the prayer. Abū Ḥanīfa says not. Mālik says that the first *taslīm* is obligatory for the imam and someone praying alone. Ash-Shāfi'ī says it is obligatory for those following. Abū Ḥanīfa says that it is not obligatory. Aḥmad has two positions, one of which is that both *taslīms* are mandatory. The second *salām* is *sunna* according to Abū Ḥanīfa and the soundest positions of ash-Shāfi'ī and Aḥmad. Mālik says that it is not *sunna* for the imam or someone praying alone but that it is recommended for those following to say the *salām* three times, once to the right, once to the left and a third time to the front to return the greeting of the imam. Who is the *salām* directed to? Abū Ḥanīfa says it is to the guardian angels and the people to the right and left. Mālik says that for the imam and for someone alone it is simply the way of ending the prayer. For those following, the first *salām* is to end the prayer and the second to return the greeting of the imam. Ash-Shāfi'ī says that someone alone intends to greet all angels, men and jinn on his right and left and that the imam intends by the first *salām* to end the prayer and by the second to greet those following. Aḥmad says that it is simply a matter of ending the prayer.

The *qunūt*: The *sunna* is to do the *qunūt* in *Ṣubḥ*, as ash-Shāfi'ī related from the Rāshidūn Khalifs, and that is also the position of Mālik. Abū Ḥanīfa says that it is not *sunna* to do *qunūt* in *Ṣubḥ*. Aḥmad says that rulers should do *qunūt* for armies but that if someone else does it, there is no harm in it. Abū Ḥanīfa and Aḥmad disagree about those who pray behind an imam who does the *qunūt* in *Ṣubḥ* and whether he should be followed or not. Abū Ḥanīfa says that he should not, but Aḥmad says that he should. Abū Yūsuf says if the imam does the *qunūt*, then a follower should do it with him.

Mālik did not raise his hands in the *qunūt*. Ash-Shāfi'ī recommends it and says that it should take place after *rukū'*, while Mālik says before.

Glorification in the prayer: They agree that the glorification in *rukū'* is, "Glory be to my Lord, the Immense" (*subhāna rabbi'l-aẓīm*), and in *sujūd* it is, "Glory be to my Lord the Most High" (*subhāna rabbi'l-a'lā*). Saying, "Allah hears...", "Our Lord, praise is Yours", and asking for forgiveness between *sajdas* and the *takbīrs* is also prescribed. Three say that they are *sunna*. Aḥmad says that they are mandatory once. Repeating the formula three times is the best. They agree that the *takbīrs* are part of the prayer, but it is reported that Abū Ḥanīfa says that the first *takbīr* is not. The *sunna* with three is to put the knees down before the hands in *sujūd*. Mālik says that the hands should be put down before the knees.

Private parts: Concealing the private parts from others is mandatory by consensus. It is a precondition for the validity of the prayer, except with Mālik who says it is mandatory for the prayer, but not a precondition for its validity. Abū Ḥanīfa and ash-Shāfi'ī say that the private parts of a man are everything between the navel and the knees. Two things are reported from Mālik and Aḥmad, one of which is the same as the others, and the other that it is only the genitals themselves. They agree that a man's navel is not one of the private parts. Mālik, ash-Shāfi'ī and Aḥmad say that the knees do not constitute private parts. Abū Ḥanīfa and some Shāfi'ites say that they do. Abū Ḥanīfa says that private parts of a free woman comprise her whole body apart from the face, palms and feet. He also says in one report that the feet are included as well. Mālik and ash-Shāfi'ī say everything except for her face and palms. Two things are reported from Aḥmad. One is everything except the face and palms, and the well-known one is everything except the face.

Exposing the private parts: Does exposing the private parts invalidate the prayer? Abū Ḥanīfa says that if an area of the genitals the size of a dirham is exposed, the prayer is not invalid, and if less than a quarter of the thigh is uncovered, the prayer is not invalid. Ash-Shāfi'ī says that the prayer is invalidated by the exposure of any of the private parts whatsoever. Aḥmad says that if a little

becomes exposed, the prayer is not invalid, but if it is a lot it is. A 'little' is what is normally considered to be a little. Mālik says that if someone is aware of being exposed and is able to cover his private parts and still prays with the private parts exposed, then his prayer is invalid. Aḥmad made it obligatory to cover the shoulders in the prayer. If a person has no clothes, according to Mālik and ash-Shāfi'ī, he can pray standing, bowing and prostrating and his prayer is valid. Abū Ḥanīfa says that he may pray sitting or standing. Aḥmad says he should pray sitting down and indicate the other positions with his head.

Purity: They agree that purity of the clothing, body and place of the person praying is mandatory. It is a precondition for the validity of the prayer with Abū Ḥanīfa, ash-Shāfi'ī, Aḥmad, and there are three transmissions from Mālik, the best known of which is that if someone prays knowing about the impurity, his prayer is not valid. If he is ignorant or forgets, it is valid. Purity from ritual impurity is a precondition for the validity of the prayer by consensus. If someone leads people in the prayer while in *janāba*, his prayer is invalid without dispute, whether he knows that he is in *janāba* at the moment he begins or forgets. If the one following knows his imam is in *janāba*, his prayer is invalid. If he does not know, his prayer is valid according to ash-Shāfi'ī and Mālik, while Abū Ḥanīfa says it is invalid. If it is a question of minor impurity, then the prayer is invalid according to ash-Shāfi'ī, Mālik and Aḥmad. Abū Ḥanīfa says that the prayer is not invalid and that the imam should do *wuḍū'* and continue the prayer. They agree that purity of the body is a precondition for the prayer when it is possible. Knowledge that the time has come or its probability is also a precondition of the prayer, except in the case of Mālik who says that the precondition is knowledge not probability.

Facing the qibla: They agree that facing the *qibla* is a precondition for the validity of the prayer, except if there is a valid excuse, such as intense fear in war, or in voluntary prayers for a traveller on a long journey on a mount, although he should face *qibla* to begin and for the *takbīr al-ihrām*. The person praying while resident must face *qibla*. If he is travelling, he should use his discretion, information

and following the people where he is. If someone prays in a direction he thinks is right and then finds out that he is wrong, only ash-Shāfi'ī says he has to repeat it.

Speaking in the prayer: If someone speaks or greets someone in his prayer out of forgetfulness or ignorance of the prohibition or his tongue runs ahead, but it is not a lot, the prayer is not invalidated, according to all but Abū Ḥanīfa who says that the prayer is invalidated by any speech except for the *salām*. If he speaks a lot, then the sound position with ash-Shāfi'ī is that the prayer is invalid. Mālik says that if the words are deliberate in order to put right the prayer, such as informing the imam of forgetfulness if that is the only way to get his attention, it is not invalid. They agree that the prayer is invalidated by eating, as is the case with drinking, except for Aḥmad in the voluntary prayer. If the imam does something wrong in the prayer, a man should say "Glory be to Allah" (*subḥānallāh*) and a woman should clap. Mālik says that all should say "Glory be to Allah". If someone conveys permission or warning by saying that, the prayer is not invalidated, although Abū Ḥanīfa says that it is unless he intends to alert the imam or to prevent someone from passing in front of him. If a person praying is greeted, he may answer by gesture, but it is agreed that it is not obligatory for him to do so. If someone passes in front of the person praying, it does not invalidate his prayer, even if it is a menstruating woman, a donkey or a black dog although Aḥmad says that a black dog does invalidate the prayer.

Other matters: Mālik and ash-Shāfi'ī permit a man to pray with a woman at his side. Abū Ḥanīfa says that it invalidates the man's prayer. It is not disliked to kill snakes and scorpions during the prayer.

Forbidden places of prayer: They disagree about the places in which it is forbidden to pray and whether or not the prayer is invalid in them. Abū Ḥanīfa says it is disliked but if someone does pray in such a place, his prayer is still valid. Mālik says that the prayer in such places is valid, even it is clearly disliked because one can rarely be safe from impurity there. Ash-Shāfi'ī says that the prayer in them is valid but disliked, except for cemeteries when there are open

graves, in which case the prayer is not valid. If there are no open graves, it is disliked but allowed. The well-known position of Aḥmad is that the prayer in them is invalid. The places are seven: cemeteries, slaughterhouses, rubbish heaps, bathhouses, roadways, camel pens and on top of the Ka'ba.

The *sajda* of forgetfulness

They agree that the *sajda* of forgetfulness is prescribed in the prayer and puts it right after a mistake and then they disagree. Aḥmad and some Hanafis say that it is mandatory. Mālik says that it is obligatory if something is missing from the prayer and *sunna* if something is added. Abū Ḥanīfa and ash-Shāfi'ī say that it is *sunna* absolutely. They agree that if someone omits it out of forgetfulness, his prayer is not invalid, except for one report from Aḥmad. They disagree about when it should be done. Abū Ḥanīfa says that it should be done after the *salām*. Mālik says that if it is for missing something, it is done before the *salām*, and if it is for adding something, it is after it. If there is addition and omission, then it is done before the *salām*. Ash-Shāfi'ī says that it is always done before the *salām*. Aḥmad says it is done before the *salām*, unless it is for accidental omission of something in the prayer or when there is uncertainty about the number of *rak'ats* prayed, in which case you should build on what is probable and prostrate after the *salām*.

Uncertainty about number of *rak'ats*: If the imam is unsure about the number of *rak'ats* prayed, he builds on what he is certain about in the view of Mālik and ash-Shāfi'ī and that is also the position of Abū Ḥanīfa with someone praying alone. He has two positions about the imam, one is the same as that and the second is that he should build on what is probable.

General forgetfulness: If someone forgets the first *tashahhud* and remembers after standing up, he should not go back to it according to ash-Shāfi'ī. If he remembers before reaching the upright position, he should return and do the *sajda* of forgetfulness. Mālik says that if his buttocks have left the ground, he should not go back. Aḥmad

says that if he remembers after standing up, but before reciting, he can choose, but it is most likely that he does not go back. If he stands for a fifth *rak'at* and then remembers, ash-Shāfi'ī says that he should sit down again. If he forgets the *tashahhud* in the fourth *rak'at*, he should say it in the fifth and do the *sajda* of forgetfulness. Abū Ḥanīfa says that if he remembers before he goes into *sujud* in a fifth *rak'at*, he should return to sitting. If someone is praying a *nafla* prayer and rises for a third *rak'at*, there is no disagreement among the scholars that he can make it four or can return to two and do the *salam* and the *sajda* for forgetfulness. If he prays *Maghrib* with four *rak'ats* out of forgetfulness, he should do the *sajda* for forgetfulness and his prayer is allowed.

The position of imam: When the imam is told by those behind him that he has omitted a *rak'at*, ash-Shāfi'ī and Aḥmad say that he should not accept it if he is certain, but acts according to his own certainty. Abū Ḥanīfa says that he should accept what they say and there are various reports from Mālik.

Omission of sunan: According to ash-Shāfi'ī, the *sajda* of forgetfulness is not done on account of omitting a *sunna*, except in the case of the *qunūt*, the first *tashahhud* and the prayer on the Prophet. Abū Ḥanīfa says that if the imam omits the *takbīrs* of the 'īd, he should do the *sajda* for forgetfulness. The imam should also do the *sajda* for forgetfulness for reciting outloud in a silent prayer and the reverse. Mālik says that if the imam recites outloud in a silent prayer, he should prostrate after the *salām* and if he remains silent in a prayer which should be outloud, he should do the *sajda* for forgetfulness before the *salām*.

Additional matters: If someone repeats the forgetfulness, the two *sajdas* are enough for all by consensus. If someone forgets behind an imam, he does not prostrate. If the Imam forgets, the follower is subject to his forgetfulness. If the Imam does not prostrate, Mālik says that the follower should prostrate and that is the predominant view in the school of ash-Shāfi'ī and is one transmission from Aḥmad.

The sajdas of recitation

They are *sunna* for both the reciter and the listener with three but Abū Ḥanīfa says that they are mandatory. The *sajdas* of recitation according to the predominant view of ash-Shāfi'ī and Aḥmad are fourteen in number. There are two in *Sūrat al-Ḥajj* but Abū Ḥanīfa and Mālik say that there is only one. There is a question about whether the *sajda* in *Sūrat Ṣad* is for thankfulness or recitation. Abū Ḥanīfa, Mālik and Aḥmad, in one report, say that it is for recitation. Ash-Shāfi'ī and Aḥmad in the well-known position say that it is a prostration of thankfulness recommended outside of the prayer. They agree that the *Mufaṣṣal* (the last part of the Qur'an) has three prostrations: in *an-Najm*, *al-Inshiqāq* and *al-'Alaq* except for Mālik who says that there is no prostration in the *Mufaṣṣal*. They agree about the rest of the ten prostrations in *al-A'rāf*, *ar-Ra'd*, *an-Naḥl*, *al-Isrā'*, *Maryam*, the first of *al-Ḥajj*, *al-Furqān*, *an-Naml*, *as-Sajda* and *Fuṣṣilat*.

Various factors: If the reciter is not praying but the one who hears is, the listener does not prostrate then or afterwards, except in the view of Abū Ḥanīfa who says he should prostrate when he finishes the prayer. The preconditions of the prayer apply to it. *Rukū'* is not done according to three, while Abū Ḥanīfa says that it is recommended. It is not disliked for the imam to recite an *āyat* of *sajda*, according to ash-Shāfi'ī and Mālik. Abū Ḥanīfa says that it is disliked when silent but not when aloud. Aḥmad says that if he says it silently he does not prostrate. Ash-Shāfi'ī says that when the imam prostrates for recitation and the follower does not follow him, his prayer is invalid in the same way as it is when the followers omits the *qunūt* with the imam. Ash-Shāfi'ī says that in the *sajda* of recitation there is a *takbīr* and *salām* without a *tashahhud*, which is the position of Aḥmad. Abū Ḥanīfa and Mālik say there is no *salam*.

Sajda of thankfulness: Ash-Shāfi'ī and Aḥmad recommend that someone who receives a blessing or wants to avert an affliction from himself should prostrate out of thankfulness to Allah Almighty. Aṭ-Ṭahāwī said that Abū Ḥanīfa did not believe that there was a *sajda* for thankfulness and ash-Shaybānī reported that it is disliked. Mālik

says that it is disliked separate from the prayer. It is recommended that when a reciter recites an *āyat* of mercy, he should ask for it, and when he recites an *āyat* of punishment, he should seek refuge from it. Abū Ḥanīfa says that doing so is disliked in the *fard* prayer.

Voluntary Prayers

The firmest of the *sunna* prayers performed with the *fard* prayers are the *witr* and the two *rak'ats* of *Fajr*. Mālik and ash-Shāfi'ī think that the firmest of those is the *witr*, while Aḥmad thinks it is the two *rak'ats* of *Fajr*. Abū Ḥanīfa says that the *witr* is mandatory but not obligatory. They agree that the regular voluntary prayers are the two *rak'ats* of *Fajr*, two before and two after *Zuhr*, two after *Maghrib* and two after '*Ishā*'. Abū Ḥanīfa and ash-Shāfi'ī say four before '*Aṣr*' while Abū Ḥanīfa says two or four before *Zuhr*. Ash-Shāfi'ī says four after it. Abū Ḥanīfa says four or two after it. Abū Ḥanīfa says four before and four after '*Ishā*' and that the *sunna* of the *Jumu'a* is four before and four after.

Form of prayer: The *sunna* in supererogatory prayers, both day and night, is to say the *salām* after every two *rak'ats*. Abū Ḥanīfa says you can pray two, four, six or eight *rak'ats* with one *salām* during the night, and four *rak'ats* during the day.

The *witr*: The minimum for the *witr* is one *rak'at* and the maximum is eleven *rak'ats*. The least for correctness is three with ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that the *witr* is three *rak'ats* with one *taslīm*, no more and no less. Mālik says that the *witr* is one *rak'at* with the *shaf'a* before it and separate from it. There is no maximum for the number of *rak'ats* before it but the minimum is two. If someone does the *witr* early and then *tahajjud* later, he does not have to repeat the *witr* in the soundest position of ash-Shāfi'ī, Mālik and Abū Ḥanīfa. Aḥmad says that he should make it even by doing one *rak'at* on its own and then repeat the *witr* later.

***Qunūt* in the *witr*:** The *sunna* is to do the *qunūt* at the end of the *witr* in the second half of Ramaḍān with ash-Shāfi'ī and doing this is well-known with Mālik. Abū Ḥanīfa and Aḥmad say that *qunūt* is

done in the *witr* throughout the year. A group of Shāfi'ites also say that.

***Tarawih*:** Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad say that doing the *tarawih* prayer in Ramaḍān is *sunna*. They say it should be twenty *rak'ats* with ten *salāms* and is best done in a group. There are reports from Mālik of *tarawih* being eight, twenty and thirty-six *rak'ats*.

Making up missed *fard* prayers: They agree that it is obligatory to make up missed *fard* prayers, but they disagree about making them up at disliked times. Abū Ḥanīfa says that it is not permitted. Mālik, ash-Shāfi'ī and Aḥmad say that it is permitted. If the sun rises while someone is doing the *Ṣubḥ* prayer, all except Abū Ḥanīfa say that the prayer is not invalid. They all agree that if the sun sets while someone is praying '*Aṣr*', his prayer is valid.

Missing *sunna* prayers: If someone misses some of the regular *sunnas*, it is *sunna*, according to ash-Shāfi'ī, to make them up, even at disliked times, in the same way as *fard* prayers and this is one of two positions from Aḥmad. Mālik says that they should not be made up. Abū Ḥanīfa says that they should be made up with the *fard* prayer if someone misses it.

Arriving after the *iqāma*: If someone enters the mosque after the *iqāma*, ash-Shāfi'ī and Aḥmad say that he should not pray the greeting of the mosque or any other *sunnas*. Abū Ḥanīfa and Mālik say that if someone is certain not to miss the second *rak'at* of *Ṣubḥ*, he should do the two *rak'ats* of *Fajr* before he enters the mosque.

Forbidden times for prayer: The times at which Mālik says the prayer is forbidden are after '*Aṣr*' until the sun sets and after *Ṣubḥ* until sunrise. There is no prayer until after the sun has set or risen. Abū Ḥanīfa and ash-Shāfi'ī add when the sun is at its zenith until it declines. Mālik and Aḥmad say that you can make up the *fard* prayers in what is an otherwise prohibited time. Ash-Shāfi'ī says that *fard* prayers can be made up at all times as well as voluntary prayers which have a reason, such as greeting the mosque, the two *rak'ats* of *ṭawāf*, the prostration of recitation, the vowed prayer, and

the prayer for renewal of purity. Abū Ḥanīfa says that during forbidden times it is not permitted to pray a *farḍ*, even if it is 'Aṣr for that day, when the sun is yellow. If someone misses *Ṣubḥ*, he should not pray it at sunrise. If he does pray and the sun rises while he is doing it, it is invalid. If someone has prayed two *rak'ats* of *Fajr*, it is disliked for him to do *nāfila* prayers after that according to Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad. Mālik says that it is not disliked. This is outside Makka. In Makka, Mālik and ash-Shāfi'ī say that *nāfila* is not disliked at those times while Abū Ḥanīfa and Aḥmad say that it is.

Group prayer

They agree that the group prayer is prescribed and that it is obligatory to make it public. If everyone in a locality refuses to establish the group prayer, they should be fought until they do so. They agree that the minimum group for all obligatory prayers except *Jumu'a* is two: an imam and a follower standing at his right. Aḥmad says that if the follower is one and stands on the imam's left, his prayer is invalid. They disagree about whether the group is obligatory in the *farḍ* prayers outside of *Jumu'a*. Ash-Shāfi'ī says that it is a general obligation. It is said that it is *sunna* and that is the best-known position. It is said that it is an individual obligation. The school of Mālik is that it is *sunna*. Abū Ḥanīfa says that it is a *farḍ kifāya*. Some Ḥanbalīs say it is *sunna*. Aḥmad says that it is mandatory for individuals but not a precondition for the validity of the prayer. If someone prays alone when he can join a group, the prayer is still valid. It is better for women to pray in their houses, but it is not disliked for them to pray in a group according to ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa and Mālik say that it is disliked to have a group prayer for women.

Intention: Followers must intend to be in a group, but the intention to act as imam is not obligatory. It is recommended by Mālik and ash-Shāfi'ī, except for *Jumu'a* when it is obligatory. Abū Ḥanīfa says that if there are women behind an imam, he must make an intention, but not if there are only men. *Jumu'a*, 'Arafa and the 'īds

are an exception. He says there must be an intention to be imam in these three cases. Aḥmad says that the intention of the imam is a necessary precondition. If someone starts to pray a *farḍ* prayer alone and the *iqāma* for the group prayer is given, it is agreed that he cannot stop and join the group. If he intends to join them without stopping his prayer, ash-Shāfi'ī has two views, the sounder of which is that it is sound to do so, and that is the best-known position from Mālik and Aḥmad. Abū Ḥanīfa says that it is not sound.

Catching the prayer: When someone catches a prayer, ash-Shāfi'ī says that he is at the beginning of his prayer in respect of action and judgement and so he should repeat the *qunūt*. Abū Ḥanīfa says that what the follower catches of the imam's prayer is the beginning of his prayer in respect of the *tashahhuds* but the end of it in respect of recitation. Mālik says in the well-known position from him that it is the end of it and there are two positions from Aḥmad.

Arriving after the group prayer: If someone enters the mosque and finds that the imam has finished the prayer, it is disliked for him to begin a new group there according to Abū Ḥanīfa, Mālik and ash-Shāfi'ī. Aḥmad says that it is not disliked to hold a group prayer after a group in any case. If someone prays alone and then finds a group praying, ash-Shāfi'ī recommends that he should pray with them. Mālik says the same, except in respect of *Maghrib*. Abū Ḥanīfa says that he should not repeat it, except in the case of *Zuhr* and 'Ishā'. Ash-Shāfi'ī says the first prayer is *farḍ* and the second is voluntary, which is also the position of Abū Ḥanīfa and Aḥmad. If someone prays in a group and then finds another group, ash-Shāfi'ī says that he should not repeat the prayer with them. Aḥmad says this only applies to *Ṣubḥ* and 'Aṣr. Mālik says that if someone prays in a group, he should not repeat that prayer.

The imam delaying movement and breaking *wuḍū'*: If the imam senses someone joining while he is bowing or in the final *tashahhud*, ash-Shāfi'ī and Aḥmad say it is recommended for him to wait. Abū Ḥanīfa and Mālik say that it is disliked. If the imam breaks *wuḍū'* it is recommended for him to delegate by Abū Ḥanīfa, Mālik and Aḥmad. Ash-Shāfi'ī has two statements, the soundest of which is that it is permitted to do so.

Connection of prayer rows to the imam: They agree that when the rows are connected and there is no road or river between them, following is valid. They disagree about what happens when there is a river or road between the imam and the followers. Mālik and ash-Shāfi'ī say their prayer is still valid. Abū Ḥanīfa says that it is not valid. If someone prays in his house with the imam's prayer in a mosque and there is a barrier which prevents him seeing the rows, Mālik, ash-Shāfi'ī and Aḥmad say their prayer is not valid, and in his best-known position, Abū Ḥanīfa says the same.

Praying a prayer different to that of the imam: They agree that it is permitted for someone praying *nāfila* to follow someone praying a *farḍ* prayer. They disagree about the reverse. Abū Ḥanīfa, Mālik and Aḥmad say it is not valid and that it is not permitted to pray a *farḍ* behind someone praying a different *farḍ*. Ash-Shāfi'ī says it is permitted.

Valid and invalid imams: Praying behind a boy with discrimination in any prayer other than *Jumu'a* is absolutely valid in the view of ash-Shāfi'ī, who differs from the other three who say that it is not valid for a *farḍ* prayer and disagree about *nāfila* prayers. In the most likely report, ash-Shāfi'ī says that it is valid to follow such a boy in *Jumu'a*, but an adult has more right to be imam than a child. The imamate of a blind person is sound by agreement without any dislike, but Abū Ḥanīfa says that a seeing person is more entitled to be imam. The imamate of someone impious is valid in the view of Abū Ḥanīfa and Ash-Shāfi'ī, who nevertheless disliked it. Mālik says, that if an imam's impiety is not a matter of interpretation, his imamate is invalid and the prayer behind him should be repeated. There are two versions from Aḥmad, the best known of which is that the prayer is not valid. It is agreed that it is not valid for a woman to lead a man in *farḍ* prayers. They disagree about whether a woman can act as imam for men in the *tarāwīḥ* prayer. Aḥmad allows it, provided she is behind, but the rest forbid it.

Most entitled imam: They disagree about who is most entitled to be imam and whether it is the person with the most *fiqh* or the one who knows the most Qur'an. Abū Ḥanīfa, Mālik and ash-Shāfi'ī say that the person with most *fiqh* is the most entitled, provided he can

recite the *Fātiḥa* well. Aḥmad says that the person with the most Qur'an, who is good in recitation and knows the rules of the prayer is more entitled. They disagree about someone illiterate who does not know the *Fātiḥa* well leading someone who does. Abū Ḥanīfa says that the prayer of both is invalid. Mālik and Aḥmad say that the prayer of the reciter alone is invalid. Ash-Shāfi'ī says that it is valid for an illiterate to lead a group in prayer. There are two statements from him about what is the position of the prayer behind him of someone who can read, the soundest of which is that it is invalid.

Impurity of the imam: It is not permitted to pray behind someone who has broken *wuḍū'*. If someone does not know it, ash-Shāfi'ī and Aḥmad say that his prayer is valid, except in *Jumu'a*. In *Jumu'a*, if there are the required number of people without him, the prayer behind such a man is invalid in the school of ash-Shāfi'ī. Abū Ḥanīfa and Aḥmad say that the prayer behind someone who has broken *wuḍū'* is invalid in every case. Mālik says that if the imam has forgotten that, the prayer of those behind him is valid. If he knows, it is invalid.

Praying behind a seated imam: The prayer of someone standing behind someone sitting is valid according to Abū Ḥanīfa and ash-Shāfi'ī. Two things are reported from Mālik. Aḥmad says that people should pray behind him sitting.

The imam and the iqāma: Mālik, ash-Shāfi'ī and Aḥmad say that the imam must wait after the *iqāma* until the rows are straight. Abū Ḥanīfa says that when the *mu'adhdhin* says in the *iqāma*, "Come to prayer," he stands and those behind him follow. When he says, "Qad qāmat," the imam says the *takbīr al-iḥrām*. When the *iqāma* is over, the imam begins to recite.

Women and boys in the prayer: If boys are with the men, the Shāfi'ite position is that the men should stand in one row and the boys behind them. Some of his people say that one boy should stand between every two men to teach them the prayer. That is the position of Mālik. If there are women, they should stand behind the boys. If a woman stands in the first row between the men, the prayer of all of them is invalid. According to Abū Ḥanīfa, the prayer of the

man on her left, right and behind her is invalid, but her prayer is not. If someone stands in a row on his own, his prayer is allowed by three, but disliked. Aḥmad says that his prayer is invalid if he is alone when the imam bows.

Getting in front of the imam: If a follower is in front of the imam in the standing, his prayer is invalid according to Abū Ḥanīfa and Aḥmad, while Mālik says that is valid. Ash-Shāfi'ī has two positions. The predominant one is that it is invalid.

The Travelling Prayer

They agree that it is permitted to shorten the prayer while travelling, but they disagree whether it is an indulgence or a firm instruction. Abū Ḥanīfa says that it is a firm instruction and is strict about it. Mālik, ash-Shāfi'ī and Aḥmad say that it is an indulgence which is permitted while travelling. All but Abū Ḥanīfa say that it is not permitted to shorten the prayer on a journey which involves disobedience to Allah.

Minimum distance for shortening: It is not permitted to shorten the prayer except for a distance of two days or a day and night, which is sixteen parsangs or four mail-stages in the view of ash-Shāfi'ī, Mālik and Aḥmad. Abū Ḥanīfa says that it should not be shortened for a journey of less than twenty-four parsangs. If someone travels a distance of three days, it is agreed that it is better to shorten but allowed to pray in full. Abū Ḥanīfa says that it is not allowed to do the prayer in full and that is also the position of some Mālikīs.

The point where shortening begins: It is only permitted to shorten the prayer after leaving the houses of the town from which the journey starts according to Abū Ḥanīfa and ash-Shāfi'ī. There are two versions from Mālik. One is that he should leave them so that there are none level with him, and the second is that he should go three miles.

A traveller praying behind a resident: If a traveller follows a resident in any part of the prayer, he must do the full prayer except in the case of Mālik who says that if someone catches a whole *rak'at* of the prayer of a resident, he must pray it in full, otherwise not. If someone prays *Jumu'a* and a traveller follows him intending a shortened *Zuhr*, he must do it in full because the *Jumu'a* prayer is the prayer of a resident. That is the position of ash-Shāfi'ī.

Continual travel: If a sailor travels in a ship with his family and property, ash-Shāfi'ī says that he can shorten and that is also the position of Abū Ḥanīfa and Mālik. Aḥmad says he should not. It is the same with a drover who travels all the time. Aḥmad says he has no permission but the other three say that he can shorten and not fast.

Nāfila prayers on a journey: It is not disliked for someone who shortens to do *nāfila* during their journey.

Maximum stay to remain a traveller: If a traveller intends to stay in a place for four days, he becomes a resident according to Mālik and ash-Shāfi'ī. Abū Ḥanīfa says that if someone intends to stay for fifteen days, he becomes resident. Aḥmad says he is resident if he intends to stay for a period of more than twenty prayers.

Travellers making up missed prayers: If someone misses a prayer at home, he must make it up on a journey as a full prayer. If he misses a prayer on a journey and makes it up at home, ash-Shāfi'ī has two positions, the soundest of which is that he does it in full which is also what Aḥmad says. The other is that he does it shortened which is what both Abū Ḥanīfa and Mālik say.

Combining prayers on a journey: It is permitted by Mālik, ash-Shāfi'ī and Aḥmad to combine *Zuhr* and '*Aṣr*', and *Maghrib* and '*Ishā'*', when travelling, advancing or delaying them. Abū Ḥanīfa says that it is not permitted to combine two prayers with the excuse of travelling.

Combining prayers while resident: It is permitted because of rain to combine *Zuhr* and '*Aṣr*', advanced to the beginning of the time,

according to ash-Shāfi'ī. Abū Ḥanīfa says that it is not permitted at all. Mālik and Aḥmad say that *Maghrib* and '*Ishā*' can be combined but not *Zuhr* and '*Āṣr*', whether the rain is strong or weak, but this allowance is particular to those who pray in a group in a mosque, reaching which involves going through the rain. It is not permitted to join prayers on account of sickness or fear in the apparent school of ash-Shāfi'ī. Aḥmad says it is permitted. The later Shāfi'ītes allow choice.

The Fear Prayer

They agree that the fear prayer continued after the death of the Prophet, although it is reported from al-Muzanī that it was abrogated and Abū Yūsuf says that it was particular to the Messenger of Allah. They agree that it contains four *rak'ats* while resident and two on a journey. When resident the imam prays two *rak'ats* with one group and two with the other group according to three Imams. Mālik says that the fear prayer should not be prayed while resident but his adherents permit it.

Prayer during intense fighting: They disagree about the prayer when fighting is intense. Abū Ḥanīfa says that people should not pray in this state but delay the prayer until it is possible. Mālik, ash-Shāfi'ī and Aḥmad say that they should not delay, but pray according to the situation and are allowed to pray however they can, on foot, mounted, facing *qibla* or not. They should indicate *rukū'* and *sujud* with their heads. Is it necessary to carry arms for the fear prayer or not? Abū Ḥanīfa, ash-Shāfi'ī in one view, and Aḥmad say that it is recommended but not obligatory. Mālik, and ash-Shāfi'ī in another view, say that it is mandatory. If people see a crowd and think that it is the enemy and pray the fear prayer and then it becomes clear that it is not, only ash-Shāfi'ī and Aḥmad, according to one position, say that they should repeat the prayer.

The Jumu'a prayer

Scholars agree that the *Jumu'a* prayer is *fard 'ayn* and not a *fard kifaya*. It is obligatory for residents but not travellers. It is not obligatory for children, slaves, travellers or women.

Place of obligation: Anyone outside a city in a place where the *Jumu'a* is not performed who hears the call must go to *Jumu'a*, according to Mālik, ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that anyone living outside the city does not have to go to *Jumu'a*, even if he hears the call. He is like a traveller who comes to a city where *Jumu'a* is held; he can choose between it and praying *Dhuhr*. Abū Ḥanīfa says that *Zuhr* in a group on *Jumu'a* is disliked for someone who cannot go to *Jumu'a*. Mālik, ash-Shāfi'ī and Aḥmad say that it is not disliked.

Coincidence of Jumu'a and the 'Īd: When the 'Īd falls on the day of *Jumu'a*, ash-Shāfi'ī says that the people of the city must still perform *Jumu'a*, but it is not obligatory for people from villages who are present. They can pray the 'Īd and leave. Abū Ḥanīfa says that *Jumu'a* is obligatory for the people of the town and Aḥmad says that it is not obligatory for the people of the villages or the town. They should pray *Zuhr*.

Travelling and selling on the day of Jumu'a: If someone is one of the people who would normally pray *Jumu'a* and wants to travel after midday, he is not allowed to do so unless he can pray *Jumu'a* on the way or will be harmed by staying behind his companions. Abū Ḥanīfa and Mālik say that he should go before midday. There are two positions from ash-Shāfi'ī, the soundest of which is that it is permitted, which is one position of Aḥmad. Selling after midday is disliked and *ḥarām* after the second *adhān*. Abū Ḥanīfa and ash-Shāfi'ī say that it is valid while Mālik and Aḥmad say that it is not.

Talking during Jumu'a: They disagree about people speaking during the *khuṭba* when no one can hear it. Ash-Shāfi'ī and Aḥmad say it is permitted but recommend silence. Abū Ḥanīfa says that it is not permitted to speak and Mālik says that silence is mandatory. They disagree about someone who can hear someone talking during the

khuṭba. Abū Ḥanīfa, Mālik and ash-Shāfi'ī in the old school say that it is *ḥarām* for both speaker and listener, although Mālik permitted speaking in order to set things right, such as telling newcomers not to step over people. In *al-Umm*, ash-Shāfi'ī says that it is not *haram* but disliked. The well-known position from Aḥmad is that it is *ḥarām* for the listener to reply, but not *haram* for the speaker.

Places where Jumu'a is valid: Ash-Shāfi'ī says *Jumu'a* is only valid in places inhabited by those by whom the *Jumu'a* is held. Mālik says the only places in which *Jumu'a* must be held are towns in which the houses are connected and where there is a mosque and market. Abū Ḥanīfa says that *Jumu'a* is only valid in a city where there is a ruler who orders it. If the people of a city go outside the city and hold a *Jumu'a*, it is not valid according to three, while Abū Ḥanīfa says it is valid if it is close to the city.

Ruler's permission: It is recommended that *Jumu'a* should only be held with the permission of the ruler. If it is held without his permission, Mālik, ash-Shāfi'ī and Aḥmad say it is valid while Abū Ḥanīfa says that it can only be held with the permission of the ruler.

Numbers necessary for Jumu'a: *Jumu'a* is only held when there are forty men present, according to ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says four. Mālik says it can be with less than forty, although it is not mandatory for three or four. If forty travellers meet for *Jumu'a* it is not valid, although Abū Ḥanīfa says that it is sound if they are in a place where *Jumu'a* can be held. Can a *Jumu'a* congregation be constituted of slaves and travellers? Abū Ḥanīfa and Mālik say that it can and ash-Shāfi'ī and Aḥmad say that it cannot. If the imam says the *takbīr* with a sufficient number and then they leave, Abū Ḥanīfa says that if he has prayed one *rak'at* with a prostration, *Jumu'a* is achieved. His companions say that if they leave after he has said the *takbīr al-iḥrām*, *Jumu'a* is achieved. Mālik says if they leave after he has prayed a *rak'at* with both its prostrations, *Jumu'a* is achieved. Ash-Shāfi'ī has several statements, the soundest of which is that it is invalid and he should complete it as *Zuhr*, and Aḥmad says the same.

Time of Jumu'a: All but Aḥmad say that *Jumu'a* is only valid at the time of *Zuhr*. Aḥmad says it is permitted before midday. If it starts in the time and then goes on until the time ends, it should be prayed as *Zuhr* in the view ash-Shāfi'ī. Abū Ḥanīfa says that the prayer is invalid if it goes outside the time. Mālik says that if *Jumu'a* is not prayed until the time of 'Aṣr, it can still be prayed as long as the sun has not yet set.

Arriving late for Jumu'a: If someone catches a *rak'at* with the imam, he has caught *Jumu'a*. If less, he has not and should pray *Zuhr* with four *rak'ats*, according to Mālik, ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that he has caught it with anything.

The khuṭbas: They agree that two *khuṭbas* are a precondition for *Jumu'a* and they must come before the prayer. The school of ash-Shāfi'ī is that the *khuṭbas* must contain five things: praise of Allah, prayer on the Prophet, command to *taqwā*, recitation of an *āyat* and supplication for the believers. Abū Ḥanīfa says that that it is enough if the imam glorifies Allah, says the *shahāda*, even "praise belongs to Allah," while his companions say that it must have the minimum of what is normally called a *khuṭba*. Two things are reported from Mālik, one of which is that it is enough if he glorifies Allah or says the *shahāda*, and the other is that it must be what is customarily called *khuṭba*.

Standing to give the khuṭba: The imam should stand for the *khuṭba* when he is able to do so. They disagree about whether it is obligatory. Mālik and ash-Shāfi'ī say that it is mandatory. Abū Ḥanīfa and Aḥmad say that it is not obligatory. Ash-Shāfi'ī makes it obligatory to sit between the two *khuṭbas*. Purity is a precondition for both *khuṭbas* in the school of ash-Shāfi'ī. Abū Ḥanīfa, Aḥmad and Mālik say that it is not a precondition.

Various matters concerning the imam: When the imam ascends the *minbar*, ash-Shāfi'ī and Aḥmad say that he should greet those present. Abū Ḥanīfa and Mālik say that it is disliked for him to greet them because he greets them when he comes out to them and should not repeat the greeting again on the *minbar*. If someone enters while the imam is speaking, ash-Shāfi'ī and Aḥmad say that he should

pray the greeting of the mosque. Abū Ḥanīfa and Mālik say that is disliked. They disagree about whether it is permitted for the prayer to be led by other than the *khaṭīb*. Abū Ḥanīfa says it is allowed with an excuse. Mālik says that only the *khaṭīb* may lead the prayer. There are two positions from ash-Shāfi‘ī and Aḥmad, the sounder being that it is permitted.

Recitation in the *Jumu‘a* prayer: Part of the *sunna* is to recite *Sūrat al-Jumu‘a* and *al-Munāfiq* or *al-A‘lā* and *al-Ghāshiyā*. Abū Ḥanīfa says nothing is specified.

***Ghusl* for *Jumu‘a*:** *Ghusl* for *Jumu‘a* is *sunna* with all the *fuqahā*. It is recommended that the *ghusl* should be done immediately before going out to it. It is permitted from *Fajr* with Abū Ḥanīfa, ash-Shāfi‘ī and Aḥmad. Mālik says that *ghusl* is only sound if it is done immediately before going to the prayer. This is recommended for those who are resident. A single *ghusl* for both *janāba* and *Jumu‘a* is allowed by all except Mālik.

Single *Jumu‘a* in a town: Even if a town is large, there should not be more than one *Jumu‘a* there according to ash-Shāfi‘ī and Mālik. Mālik says that if there are several mosques in the town, it should be held in the oldest of them. Abū Ḥanīfa says nothing about that, but Abū Yūsuf says if the city has two distinct districts, there can be two *Jumu‘as*. If it has one, then only one. Aḥmad says that if the city is large, like Baghdad, there can be two *Jumu‘as*. If there is no need, then it is not permitted. Ash-Shāfi‘ī says that more than one is permitted if the dimensions of a city make it necessary.

Missing *Jumu‘a*: They agree that if someone misses *Jumu‘a*, he should pray *Dhuhr*. Abū Ḥanīfa and Mālik say that he should pray individually and ash-Shāfi‘ī and Aḥmad say that people may pray in a group.

‘Īd prayers

They agree that the ‘Īd prayers are prescribed and then they disagree. Abū Ḥanīfa says that they are an individual obligation like

Jumu‘a, while Mālik and ash-Shāfi‘ī say they are *sunna* as does one report from Abū Ḥanīfa. Aḥmad says that they are a *farḍ kifāya*.

Preconditions for the ‘Īd prayers: They disagree about the preconditions for the ‘Īd prayers. Aḥmad and Abū Ḥanīfa say that they include residency, number, and the permission of the ruler as is the case for *Jumu‘a*. Abū Ḥanīfa also says a city. Mālik and ash-Shāfi‘ī say: none of these is a precondition. They permit it to be done individually by men and women.

***Takbīrs* for the ‘Īd prayers:** They agree that it begins with the *takbīr al-iḥrām*, but they disagree about the *takbīrs* after that. Abū Ḥanīfa says that there are three in the first *rak‘at* and three in the second. Mālik and Aḥmad say six in the first *rak‘at* and five in the second. Ash-Shāfi‘ī says seven in the first *rak‘at* and five in the second. Ash-Shāfi‘ī and Aḥmad say that *dhikr* is recommended between the *takbīrs*. Abū Ḥanīfa and Mālik say that the *takbīrs* should be continuous. They disagree about putting the *takbīrs* before the recitation. Mālik and ash-Shāfi‘ī say that the *takbīrs* precede the recitation in both *rak‘ats*. Abū Ḥanīfa says that the recitation is consecutive so that the *takbīrs* in the first *rak‘at* are before the recitation and in the second after the recitation. Aḥmad has both statements. They agree about raising the hands in the *takbīrs*, although there is one transmission from Mālik about raising them only for the *takbīr al-iḥrām*.

Missing the ‘Īd prayer: They disagree about someone who misses the ‘Īd prayer with the imam. Abū Ḥanīfa and Mālik say that he should not make it up. Aḥmad says that he should make it up alone. Both positions are recorded from ash-Shāfi‘ī, the soundest of which is that it should be made up alone. They disagree on how it is made up. Aḥmad says that it should be prayed as four *rak‘ats* like *Zuhr* and ash-Shāfi‘ī says that it is made up with two *rak‘ats*.

Place of the ‘Īd prayer: They agree that the *sunna* is to pray the ‘Īd prayer outside the city, not in the mosque, except for the Shāfi‘ites who say that it is better to pray it in the mosque if it is large enough. If it is held in the mosque for the frail Muslims, that is allowed,

Nāfila prayers: They disagree about whether it is better to do *nāfila* prayers before or after the ‘Īd prayer. Abū Ḥanīfa says that there are none before it but they can be prayed after it and that there is no difference between the imam and others in this respect. Mālik says that if the prayer is at a prayer ground, there is no *nāfila* before or after it for anyone. There are two positions if it takes place in a mosque. Ash-Shāfi‘ī allows *nāfila* prayers before and after the ‘Īd prayer in a mosque, except for the imam. When he comes out to people, he should not pray before doing the ‘Īd prayer. Aḥmad says that there is no *nāfila* before or after it.

Call and recitation in the ‘Īd prayer: It is recommended that the prayer be announced with the words “The prayer is gathered” (*Aṣ-ṣalātu jāmi‘a.*). Ash-Shāfi‘ī says that *Sūrat Qaf* should be recited in the first *rak‘at* and *al-Qamar* in the second, or *al-A‘lā* and *al-Ghāshiyā*. Abū Ḥanīfa says that no *sūra* is specified. Mālik and Aḥmad say that he should recite *al-A‘lā* and *al-Ghāshiyā*.

Uncertainty about the ‘Īd: If people arrive after midday thinking it is still the 30th Ramaḍān when the new moon has in fact been seen, the ‘Īd prayer should be made up according to the soundest position of ash-Shāfi‘ī. Mālik says that it should not be made up. Aḥmad says that if the people cannot be gathered on the day of the ‘Īd, then it is prayed the following morning. Abū Ḥanīfa says that the *Fiṭr* prayer can be prayed on the second day and *Aḍḥā* on the second and third.

Takbīrs on the days of ‘Īd: They disagree about the *takbīrs* at the ‘Īd of Sacrifice and Days of *Tashrīq* and when it begins and ends in respect of the one in *iḥrām* and not in *iḥrām*. Abū Ḥanīfa and Aḥmad say that he says the *takbīr* from *Fajr* of ‘Arafa until the ‘Aṣr prayer on the Day of Sacrifice. Mālik says from *Zuḥr* of the Day of Sacrifice to *Ṣubḥ* on the last Day of *Tashrīq* which is the fourth day of the ‘Īd. Ash-Shāfi‘ī says what Mālik says, and in his school it is from *Ṣubḥ* of ‘Arafa and ends with ‘Aṣr of the last Day of *Tashrīq*. They agree that the *takbīr* is *sunna* in groups. They disagree about someone who prays alone at these times. Abū Ḥanīfa and Aḥmad in one place say that someone praying alone does not say it. Mālik,

ash-Shāfi‘ī and Aḥmad in another version say that he does. They agree that it is not said after the *nāfila* except for ash-Shāfi‘ī.

The Eclipse Prayer

They agree that the solar eclipse prayer is a confirmed *sunna* in a group and then they disagree about its form. Mālik, ash-Shāfi‘ī and Aḥmad say that it consists of two *rak‘ats* with two standings, recitations, *rukū‘*s and *sujūds* in each *rak‘at*. Abū Ḥanīfa says that they are two *rak‘ats* like the *Ṣubḥ* prayer. Abū Ḥanīfa, ash-Shāfi‘ī and Mālik say that its recitation is silent. Aḥmad says it is aloud. Abū Ḥanīfa and Aḥmad say that no *khuṭba* is *sunna* for the eclipse prayer. Ash-Shāfi‘ī, Aḥmad and Mālik say that it is *sunna* for it to have two *khuṭbas*.

Lunar eclipses: Is a group prayer *sunna* for the lunar eclipse prayer? Abū Ḥanīfa and Mālik say that it is not but it should be prayed individually. Ash-Shāfi‘ī and Aḥmad say that it is *sunna* in a group as for the solar eclipse. Recitation is aloud. The eclipse prayer can be prayed individually as well as in a group.

Prayer for other natural phenomena: There are other signs than the eclipse, such as earthquakes, lightning bolts and darkness in the day for which there is no prayer with the three, except for Aḥmad who says that a group prayer is prayed for every sign.

The Rain Prayer

They agree that asking for rain is *sunna*, but they disagree about whether the prayer is a *sunna* or not. Mālik, ash-Shāfi‘ī, Aḥmad, and the two companions of Abū Ḥanīfa say that the group prayer is *sunna*. Abū Ḥanīfa says that the prayer is not *sunna*, but that the imam should simply go out and make supplication. It is permitted when people pray alone. Ash-Shāfi‘ī and Aḥmad says that it is like the ‘Īd prayer and its recitation is aloud. Mālik says that it is two *rak‘ats* like other prayers and the recitation is aloud.

Khutba in the Rain prayer: Mālik, ash-Shāfi'ī and Aḥmad say that it is *sunna* to have *khutbas* and there should be two after the prayer. The imam begins with asking for forgiveness. Aḥmad and Abū Ḥanīfa say that there is no *khutba*, but only supplication and asking for forgiveness.

Reversing the outer garment: It is recommended for the imam and the followers to reverse their outer garments in the second *khutba* except in the view of Abū Ḥanīfa who does not recommend that. Abū Yūsuf says it is prescribed for the imam but not the followers. They agree that if there is no rain on the first day, they should repeat the prayer on a second and third day. They agree that when people are harmed by too much rain, the *sunna* is to perform a prayer to ask Allah to remove it.

Chapter Three

Funerals

Scholars agree that it is recommended to remember death often and for those with property to make a will when they are healthy, and it is strongly recommended for them to do so when they are ill. They agree that when death is near, a dying person should be turned towards *qibla*. They agree that the cost of preparing the body for burial should come from the capital of the deceased before any debts are paid.

Washing the body: They agree that washing the dead is a *fard kifāya*. Abū Ḥanīfa and Mālik say that dead bodies should be washed naked with the private parts covered. Ash-Shāfi'ī and Aḥmad say that it is better to wash them in a shirt. Cold water is better unless it is very cold or there is a lot of dirt. Abū Ḥanīfa says that heated water is always better. They agree that a wife can wash her husband and that it is permitted for a husband to wash his wife, except for Abū Ḥanīfa who says that it is not permitted. If a woman dies and only an unrelated man is with her, or a man dies and only an unrelated woman is with him, the school of Mālik, Abū Ḥanīfa, and the soundest position of ash-Shāfi'ī is that *tayammum* is done for them. There are two views from Aḥmad: one is *tayammum* and the other is that the washer ties a rag around his hand, which is one view of ash-Shāfi'ī.

Method of washing: It is recommended for the washer to do *wuḍū'* for the corpse and use the *siwāk* on the teeth and to insert his fingers into the nostrils and wash them out. Abū Ḥanīfa does not recommend that. If the beard is matted, it should be combed gently with a wide-toothed comb. Abū Ḥanīfa says that that should not be done. When a woman is washed her hair is tied into three plaits behind her. Abū Ḥanīfa says that it should be left as it is.

Death of pregnant women: If a pregnant woman dies with a living child still in her womb, the womb should be opened according to Abū

Ḥanīfa and ash-Shāfi'ī. Aḥmad says not. There are two versions from Mālik.

Miscarriages: They agree that if a miscarried foetus is under four months, it should not be washed or prayed over. If it is more than four months, Abū Ḥanīfa says that if there is a sneeze, movement or suckling which indicates life, it should be prayed over. Mālik says the same but does not mention movement. Ash-Shāfi'ī says in one view that it should be washed and there are two views about praying over it. Aḥmad says that it should be washed and prayed over.

Various details concerning the washing: An intention on the part of the washer is not obligatory in the soundest position of the Shāfi'ītes. It is one of the positions of Abū Ḥanīfa. Mālik says that it is obligatory. If something emerges from a dead body after it has been washed, only Abū Ḥanīfa and Mālik and the soundest position of ash-Shāfi'ī say that it is obligatory to remove it. Aḥmad says that the body must be washed again if it comes from the genitalia. Abū Ḥanīfa and Mālik say that it is disliked to pluck the armpits, shave the pubes or trim the moustache of a dead person. Aḥmad says that there is no harm in doing that and ash-Shāfi'ī has two positions. They agree that it is obligatory in the washing to do what will bring about purity. The *sunna* is for it to be done an odd number of times and that there should be lote leaves and camphor in the water used for the last washing. Abū Ḥanīfa and Aḥmad say it is recommended for there to be some lote leaves in the water used for every washing. Mālik and ash-Shāfi'ī say only in the last one.

Shrouding the body: It is mandatory by agreement for the body to be shrouded before paying debts and heirs. The minimum is a cloth which covers the body. Ash-Shāfi'ī, Mālik and Aḥmad recommended for a man to be shrouded in three cloths. They all recommend white. Five cloths are recommended for a woman. Mālik says that there is no specific definition of what is meant by shrouding but what is desired is to cover the body. Ash-Shāfi'ī and Aḥmad dislike a woman to be shrouded in yellow, red or silk, but Abū Ḥanīfa says it is not disliked if she has money. The shroud is paid for from her money according to Abū Ḥanīfa, Mālik and Aḥmad. If she has no

money, Mālik says her husband must provide it. If the husband is too poor, it should be supplied by the public treasury. Aḥmad says that a husband is not obliged to shroud his wife. Ash-Shāfi'ī says that it comes first from what is left and then from a relative. No perfume is put on someone who dies in *iḥrām*, nor stitched garments, and his head is not scented. Abū Ḥanīfa says that *iḥrām* ends with death and that the body of someone who dies in *iḥrām* should be treated the same as any other.

The funeral prayer: The prayer over a dead person is a *fard kifaya*. The Mālikīs say that it is *sunna*. It is not disliked to do it at any time according to ash-Shāfi'ī. Abū Ḥanīfa and Aḥmad say that it is disliked to do it at the three times when prayer is disliked. Mālik says that it is disliked to do it at sunrise and sunset. It is permitted, without dislike, to pray over the bier in the mosque according to ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa and Mālik say it is disliked to do so. It is disliked to wail over the dead but Abū Ḥanīfa says that it is not disliked to call out over the dead.

The imam for the funeral prayer: They disagree about the person most entitled to lead the prayer. Abū Ḥanīfa, Mālik, Aḥmad and ash-Shāfi'ī in the old school say the ruler is more entitled than a relative. Abū Ḥanīfa says that it is better when the ruler is not present for a relative to put forward the imam of the region. In his new school, ash-Shāfi'ī says that it should be a relative. If the dead person has left instructions for a specific man to pray over him, all but Aḥmad say that he has no more right than the relatives. Mālik says that a son should precede a father, a brother is better than a grandfather, and that a son has more right than a husband. Abū Ḥanīfa says that it is disliked to advance a son before a father.

Preconditions for the funeral prayer: The preconditions for the validity of the funeral prayer include purity and covering the private parts.

Position of the imam: The Imam stands opposite the head of a man and the middle of a woman with ash-Shāfi'ī and the Ḥanafīs, although Abū Ḥanīfa himself says at the chest of the man and waist

of the woman. Mālik says at the chest of a man and the middle of a woman.

Form of the funeral prayer: There are four *takbīrs* in the funeral prayer. If there are more than four, the prayer is not invalid. If someone stands behind an imam who does more than four, he does not follow him in any additional ones, although Aḥmad says he should follow up to seven. Ash-Shāfi'ī says that the hands should be raised in all the *takbīrs* level with the shoulders. Abū Ḥanīfa and Mālik say that the hands should only be raised for the first. Ash-Shāfi'ī and Aḥmad consider the recitation of the *Fātiḥa* after the first *takbīr* to be *farḍ*. Abū Ḥanīfa and Mālik say that no Qur'an is recited. There are two *salāms* with three, one to the right with Aḥmad.

Missing the funeral prayer: If someone misses part of the prayer with the Imam, he should begin the prayer without waiting for a *takbīr* in the view of ash-Shāfi'ī. Abū Ḥanīfa and Aḥmad say that he waits for the *takbīr* of the imam and says it with him. Two things are related from Mālik. Positions vary regarding how long after death the funeral prayer may be said. One view is that it can be said up to a month, as Aḥmad says. Another is that it is as long as the body has not decayed, and it is also said that there is no time limit.

Various ancillary matters: It is valid to pray for an absent dead person according to ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa and Mālik say that it is not valid. It is not disliked to bury someone at night. Ash-Shāfi'ī and Aḥmad say that if part of a body is found, it should be washed and prayed over. Abū Ḥanīfa and Mālik say that this only happens if most of the body is found.

Suicides: They agree that a suicide should be prayed over but they disagree about whether the imam prays over him. Abū Ḥanīfa and ash-Shāfi'ī say that he does pray over him but Mālik says that the imam should not pray over a suicide or someone killed for a *ḥadd*. Aḥmad says that the imam should not pray over killers or suicides.

Martyrs and rebels and murder victims: If someone is martyred while in *janāba*, he should not be washed or prayed over according to Mālik and that is also the soundest position of the Shāfi'ītes. Abū

Ḥanīfa says that he should be both washed and prayed over. Aḥmad says that he should be washed but not prayed over. If someone is killed while fighting rebels, he is not a martyr and Mālik's view and the most likely position of ash-Shāfi'ī is that he should be washed and prayed over. Abū Ḥanīfa says that he should not be washed or prayed over. Two things are reported from Aḥmad. If one of the rebels is killed in the fighting, he should be washed and prayed over, according to all but Abū Ḥanīfa. If someone is killed unjustly outside of war, he is washed and prayed over, according to Mālik, ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that if he is killed with iron, he is not washed, but if he is killed with a blunt instrument, he is washed and prayed over.

No circumcision: They agree that if someone dies uncircumcised, he should not be circumcised. Abū Ḥanīfa, Mālik and ash-Shāfi'ī in the old school say that it is not allowed and Mālik says that the one who does it should be punished.

Carrying the bier: They agree that carrying the dead is a pious action. It is best that the body should be carried between two poles by four men according to ash-Shāfi'ī. Abū Ḥanīfa and Aḥmad say that four men is best. Mālik, ash-Shāfi'ī and Aḥmad say it is best to walk in front of the bier. Abū Ḥanīfa says it is better to walk behind.

Death at sea: If someone dies at sea and the ship is not near the shore, it is best to put the body between two planks and cast it into the sea, if there are Muslims on the adjacent coast. If there are unbelievers, it should be weighted and thrown into the sea according to three. Aḥmad says it is weighted in every case if burial is impossible.

Disinterment: When a corpse is buried, it is not permitted to disinter it to bury another, unless it has been such a time that the corpse is completely decayed and turned to dust.

Placing in the grave: They agree that it is not recommended to bury someone in a coffin. The head of the corpse is placed at the end of the grave and then it is slid into the grave according to three of the

Imams. Abū Ḥanīfa says that the corpse is put on the edge of the grave towards the *qibla* and then brought down level.

Shape of the grave: The *sunna* is to flatten the grave when it is filled in. Abū Ḥanīfa, Mālik and Aḥmad say that mounding it better because flattening is what the Shi'ites do. It is not disliked to get down into the grave wearing shoes with the other three, but Aḥmad dislikes it.

Consoling the bereaved: They agree that it is recommended to console relatives of the deceased but disagree about the time. Abū Ḥanīfa says it is *sunna* before burial but not afterwards. Ash-Shāfi'ī and Aḥmad say it is *sunna* before it and for three days after it. Sitting in order to be consoled is disliked by Mālik, ash-Shāfi'ī and Aḥmad. There is nothing wrong in calling out over the corpse to announce his death according to Abū Ḥanīfa and ash-Shāfi'ī. Mālik says that it is recommended so that the community knows of the death. Aḥmad says it is disliked.

Digging the grave: They agree that it is recommended to use blocks and straw in the grave but baked bricks and wood are disliked. Nothing should be built over the grave and it is not white-washed according to three of the Imams, while Abū Ḥanīfa permits doing so. They agree that the *sunna* is a *lahd* grave (a grave with a niche) and that a *shaqq* grave (a simple trench) is not *sunna*.

Supplication for the dead: They agree that asking forgiveness for the dead, supplication, *ṣadaqa*, *ḥajj*, and emancipation benefit the dead person and that the reward for such actions reaches him. It is recommended to recite Qur'an at the grave, but Abū Ḥanīfa dislikes it. The school of the *Sunna* is that a man can give the reward of his action to another. Aḥmad says that the reward of recitation reaches the dead person.

Chapter Four

Zakat

They agree that *zakat* is one of the pillars of Islam and that it is obligatory on four categories of wealth: livestock, money, trading goods and certain fruits and grains which are stored. They agree that *zakat* is obligatory for adult sane free Muslims. Apostates are still obliged to pay *zakat* according to three of the schools, while Abū Ḥanīfa says that the obligation is cancelled. *Zakat* is obliged on the property of children and the mad according to Mālik, ash-Shāfi'ī and Aḥmad, and his guardian pays it. Abū Ḥanīfa says that this is not the case. It is agreed that there is no right on property except *zakat*.

The passing of a year: The passing of a year is a precondition for the obligation of *zakat* by consensus. If someone owns the *nisab* of the category and then sells it before a year or changes it to another category, the year ends for it, according to ash-Shāfi'ī and Aḥmad, while Abū Ḥanīfa says that it is not affected by exchange where gold and silver are concerned but is where livestock are concerned. Mālik says if he changes its category, it does not cancel *zakat*. If some of the *nisab* is destroyed before the end of the year, the year ends with Abū Ḥanīfa and ash-Shāfi'ī. Mālik and Aḥmad say that if the intention was to avoid *zakat* by destroying it, the year does not end and *zakat* is obliged.

Stolen or abandoned property: In the case of stolen property, stray animals and disavowed property, if they are returned without growth, is *zakat* due for past years? The new school of ash-Shāfi'ī is that it is owed, and the old is that the year starts when it is returned and no *zakat* is due on the past. This is also the Hanafi position and one of two positions from Aḥmad. Mālik says that when it returns, he pays *zakat* for one year.

Outstanding debts: If someone owes a debt which reaches the *niṣāb*, the new position of ash-Shāfi'ī is that he must still pay *zakat*. The old was that he does not have to, as Abū Ḥanīfa also says. Debt does not cancel the tenth [on crops] with Abū Ḥanīfa. Mālik says that debt cancels the obligation where gold and silver are concerned, but not livestock. Is *zakat* obliged on what one is owed or only on capital in hand? Two things are reported from ash-Shāfi'ī. The new position is that it is obliged on capital in hand. This is also Mālik's position. Abū Ḥanīfa say that it is connected to assets like a legal tort, but that ownership remains until it is handed over to the one entitled to it. This is one view reported from Aḥmad.

Intention: They agree that *zakat* can only be paid with an intention. They disagree about whether it is permitted to make the intention before actual payment. Abū Ḥanīfa says that the intention must accompany the payment. Mālik and ash-Shāfi'ī say that the validity of payment requires an accompanying intention. Aḥmad says that doing so is recommended. It can be a little before it but not a long time which is the case with all acts of worship.

Delay in payment: Someone who owes *zakat* and is able to pay is not permitted to delay payment. Mālik and ash-Shāfi'ī say that the obligation does not fall from him if the property is destroyed. Abū Ḥanīfa says that he is not liable for it then. Aḥmad says the possibility of payment is not a precondition for the obligation or liability. If the property is destroyed after the year, he is responsible for the *zakat* whether he can pay it or not. Mālik says that if someone delays paying it until after a year or years, then he is liable for it and he has disobeyed Allah.

Death before payment: If someone is obliged to pay *zakat* and dies before paying it, it is taken from his estate according to three of the Imams. Abū Ḥanīfa, however, says that it is no longer mandatory when he dies.

Refusal to pay: If someone refuses to pay *zakat*, it is taken from him and he is disciplined. Abū Ḥanīfa says that he is imprisoned until he pays and it should not be taken by force. If someone intends to avoid *zakat* by giving or selling some of his property and then

buying it back before the year, he owes no *zakat*, even though he is a wrongdoer according to Abū Ḥanīfa and ash-Shāfi'ī. Mālik and Aḥmad say that doing this does not remove the obligation of *zakat* from him.

Early payment: It is permitted to pay *zakat* early before the full year if the *niṣab* exists except with Mālik, who does not allow it.

Zakat on animals

They agree that it is obligatory to pay *zakat* on livestock: cattle, camels and sheep and goats, when the *niṣāb* exists and there is continuous ownership for a full year if the owner is a free Muslim. They agree that it is a precondition that they are grazing except Mālik, who says it is obliged on work animals and foddered sheep as well.¹

Cattle: They agree that the first *niṣab* on cattle is thirty, for which a yearling is owed, and then forty for which there is a two-year-old female. Then they differ. Ash-Shāfi'ī and Aḥmad say that there is nothing except the two-year-old up to sixty, when two yearlings are owed. For seventy there is a yearling and a two-year-old and so on. They agree that water buffalo are the same as cattle.

Sheep and goats: They agree that the *niṣāb* on sheep and goats is forty, for which a sheep is owed. When there are one hundred and twenty-one, two sheep are owed. Then there is one for every hundred.

Horses: They agree that *zakat* is paid on horses which are for trade when their value reaches the *niṣāb*. If they are not for trade, all except Abū Ḥanīfa say that there is no *zakat* on them. Abū Ḥanīfa says that if they are grazing, there is *zakat* on them if there are males and females. If there are only males, there is no *zakat*. The owner has a choice and can pay one dinar for every horse or estimate their value and pay two and a half percent of their value.

1. The details on camels have been omitted.

Zakat on agricultural produce

They agree that the *niṣāb* is five *wasqs*, which is sixty *ṣā's*. The *zakat* obliged on land watered by rain or a river is a tenth. If it is watered by irrigation, waterwheel or purchased water, it is a twentieth. All the Imams make the payment of *zakat* on agricultural produce dependent on the *niṣāb* except for Abū Ḥanīfa who says that a tenth must be paid no matter what the quantity.

Zakatable crops: They disagree about the crops on which *zakat* is owed. Abū Ḥanīfa says that it is due on all plants and grains the earth produces, whether watered by the sky or irrigation, except for wood, grass and Persian cane. Mālik and ash-Shāfi'ī say that there is only *zakat* on things that can be stored, like wheat, barley, rice, dates and raisins. Aḥmad says that it is obligatory on all fruits and crops that can be measured and stored, even almonds, but not walnuts. Aḥmad says it is owed on sesame seeds, almonds, pistachios, flax, cumin, caraway, and mustard seeds. Abū Ḥanīfa says *zakat* must be paid on vegetables which the others do not.

Olives and cotton: They disagree about olives. Abū Ḥanīfa says that there is *zakat* on them and Mālik has two positions, the best known of which is that it is mandatory. It can be paid in olives or in oil. Ash-Shāfi'ī has two positions as does Aḥmad, the most likely being it is not mandatory. There is no *zakat* on cotton by agreement but Abu Yusuf says that it is mandatory.

Honey: They disagree about honey. Abū Ḥanīfa and Aḥmad say that there is a tenth on it. Mālik and ash-Shāfi'ī in the new school say that there is no *zakat* on it but Abū Ḥanīfa and Aḥmad disagree. Abū Ḥanīfa says that there is none if it is *kharāj* whereas Aḥmad says there is always a tenth. Aḥmad says that the *niṣāb* is three hundred and sixty *raṭls* but Abū Ḥanīfa says that *zakat* should be taken whatever the amount of honey harvested.

Combining crops: There is no *zakat* except on the *niṣāb* of every category. Different crops are not added together in the view of Abū Ḥanīfa and ash-Shāfi'ī but Mālik says that wheat is added to barley and pulses are combined.

Time of assessment: Three say that it is *sunna* to assess the fruit when its soundness appears to the owner since that contains kindness both to the owner and the poor. Abū Ḥanīfa says that assessment is not valid. Mālik and Aḥmad say that one assessor is enough and that is the preferred position of ash-Shāfi'ī.

Storing crops for more than a year: When the tenth has been paid on fruit or grain and someone still has it in his possession after a second year, he does not owe anything.

Zakat on gold and silver

They agree that there is no *zakat* on any gems like pearls, rubies and emeralds but only on gold and silver. The same applies to musk and amber.

Niṣāb: They agree that the *niṣāb* for gold and silver, whether minted, broken or ore is twenty dinars of gold and two hundred dirhams of silver. When it reaches that amount and has been in someone's possession for a year, two and a half percent is owed as *zakat*. They disagree about the excess over the *niṣāb*. Mālik, ash-Shāfi'ī and Aḥmad say that *zakat* must be paid on anything in excess proportionally according to the amount. Abū Ḥanīfa says that no *zakat* is owed on amounts over two hundred dirhams and twenty dinars until they reach forty dirhams or four dinars when a dirham must be paid on the forty and so on with every further forty. There are two *qirats* on four dinars. Should gold and silver be added together to make up the *niṣāb*? Abū Ḥanīfa, Mālik and Aḥmad in one position say that they are added together. Ash-Shāfi'ī and Aḥmad in another version say they should not be.

Zakat on debts: If someone is owed a debt which is confirmed, he must pay *zakat* on it and is obliged to pay it every year in the new school of ash-Shāfi'ī, even if he does not collect it. Abū Ḥanīfa and Aḥmad say that he only pays it after collecting the debt. Mālik says that there is no *zakat* on it, even if years pass, until he collects it, at which time *zakat* for only one year is owed.

Buying back zakat: It is disliked for a man to buy back something he has paid as *zakat*, but if he does, the purchase is valid with Abū Ḥanīfa, Mālik and ash-Shāfi'ī, and the apparent position of Aḥmad. Some Ḥanbalīs say that it is invalid, no matter what the reason.

Zakat on jewellery: Mālik and Aḥmad say that there is no *zakat* on permitted jewellery made of gold and silver which is worn or lent. Ash-Shāfi'ī has two positions, the most famous of which is that it is not necessary. If a man has jewellery which he hires to women, the predominant school of ash-Shāfi'ī is that there is no *zakat* on it. That is well-known from Mālik. Some say it is mandatory.

Zakat on commercial goods

They agree that *zakat* is obliged on trade goods and that the amount is two and a half percent of their value. When someone has trading goods whose value he is waiting to increase, Mālik says that he does not assess such goods every year or pay *zakat* on them, even if years pass, until he sells them for gold or silver, at which time he pays *zakat* of one year. This does not apply to turnover stock which he buys and sells on a regular basis for which he should set a yearly date on which he assesses what he has and at which time he pays the *zakat*. The other three say that trade goods are assessed every year in any case and *zakat* paid on their value. When someone buys goods for less than the *nisab*, Abū Ḥanīfa says that one considers the *nisab* at both ends of the year. Mālik and ash-Shāfi'ī say that one considers the full *nisab* which exists for the entire year.

Zakat on mines

All except ash-Shāfi'ī agree that the passing of a year is not considered in respect of the *zakat* of mines. All except Abū Ḥanīfa agree that it is necessary that the *niṣāb* be reached in respect of the produce of mines. He says that a fifth should be taken no matter how much or little is produced. They disagree about the amount of *zakat* obliged on mines. Abū Ḥanīfa and Aḥmad say a fifth and Mālik says two and a half percent. Ash-Shāfi'ī has various statements, the most

likely of which is two and a half percent. The *zakat* of mines is particular to gold and silver with Mālik and ash-Shāfi'ī. If the mine produces any other gems, no *zakat* is owed. Abū Ḥanīfa says that all substances taken from the earth which can be smelted like iron and lead are considered, but not turquoise and the like. Aḥmad says everything that can be smelted and other things, even antimony.

Treasure trove: They agree that the passing of a year is not considered in respect of treasure trove, and all except ash-Shāfi'ī agree that the *niṣāb* is not considered either. They disagree about how treasure trove should be defined. If someone finds it in his house, it is his and he owes nothing. Mālik and Aḥmad say it is treated like booty. Ash-Shāfi'ī says that it is treated like *zakat*. Abū Ḥanīfa says that it is treated like the produce of mines. The well-known position of ash-Shāfi'ī is that the *zakat* on it is like that of mines. There are two opinions from Aḥmad. Mālik says that, like booty and *jizya*, it is at the discretion of the ruler.

Zakāt al-Fīṭr

It is agreed that *zakāt al-fīṭr* is mandatory. Mālik and ash-Shāfi'ī say that it is *fard*, but Abū Ḥanīfa says that it is *wājib* and not *fard*. It is mandatory for young and old. A husband must pay the *zakāt al-fīṭr* of his wife as he is obliged to maintain her, according to Mālik, ash-Shāfi'ī and Aḥmad, but Abū Ḥanīfa says that he is not obliged to pay her *zakāt al-fīṭr*.

No niṣāb: In *zakāt al-fīṭr* one does not consider whether the one who pays it possesses the *niṣāb* of silver, which is two hundred dirhams. Mālik, ash-Shāfi'ī and Aḥmad say that it is mandatory for anyone who has more than sufficient food for the day and night of the 'Īd for himself and the members of his family for whom he has to provide.

Time of payment: They disagree on the time when it becomes obligatory. Abū Ḥanīfa says dawn on the first day of Shawwāl. Aḥmad says sunset on the night of the 'Īd. Mālik and ash-Shāfi'ī say both. They agree that it is not cancelled by delay in payment but

becomes a debt to be paid. It is not permitted to delay it after the day of the 'Īd.

Means of payment: They agree that it is permitted to pay it in five substances: wheat, barely, dates, raisins and ghee, although Abū Ḥanīfa says that ghee itself is not allowed although its price is. Ash-Shāfi'ī says that all agricultural produce on which *zakāt* is obliged is proper for the payment of the *zakāt al-ḥiṭr*: rice, millet, wheat and other things. Neither flour nor *sawīq* (barley mush) is allowed by Mālik and ash-Shāfi'ī. Abū Ḥanīfa and Aḥmad say that they are allowed. Abū Ḥanīfa allows their price. Mālik and Aḥmad consider dates to be best. Ash-Shāfi'ī says that wheat is better. Abū Ḥanīfa says that the most expensive is best.

Amount to be paid: They agree that a *ṣā'* based on the *ṣā'* of the Prophet is owed in each of the categories, except for Abū Ḥanīfa who says that half a *ṣā'* of wheat is enough. They disagree about the size of the *ṣā'*. Ash-Shāfi'ī, Mālik, Aḥmad and Abū Yūsuf say it is five and a third Iraqi *raṭls* (2.03 l kg.), but Abū Ḥanīfa says eight.

Recipients: The school of ash-Shāfi'ī and most of his people is that it is obligatory to give the *zakāt al-ḥiṭr* to the same eight categories as the *zakāt* of wealth. Mālik and Abū Ḥanīfa permit it to be given to one poor person. If someone pays the *zakāt* and then it is given back to him because he is in need, all except Mālik permit him to take it. Mālik says that it is not permitted.

Payment before the 'Īd: They agree that it is permitted to pay *zakāt al-ḥiṭr* a day or two before the 'Īd. They disagree about the maximum of that. Abū Ḥanīfa says it can be before Ramaḍān. Ash-Shāfi'ī says it can be from the first of the month. Mālik and Aḥmad said that it cannot be paid before the time it is mandatory.

Distribution of *zakāt*

They agree that it is permitted to give the *zakāt* to any of the eight categories mentioned in the *āyat* (9:60), except that ash-Shāfi'ī says that it must include all eight if the ruler divides it and there is

an agent who collects the *zakāt*. Otherwise it is divided between seven categories. If some of the categories are lacking, then it is divided among the rest. If all the categories are lacking in a land, it must be transferred elsewhere.

The eight categories: The eight are the poor, the indigent, agents who collect it, those whose hearts are to be reconciled, slaves, those in debt, in the Cause of Allah, and travellers. Abū Ḥanīfa and Mālik says that the poor (*faqīr*) are those who have only some of what they need and the indigent (*miskīn*) are those who have nothing. Ash-Shāfi'ī and Aḥmad say that the poor are those who have nothing and the indigent those who do not have enough.

They disagree about those whose hearts are to be reconciled. The school of Abū Ḥanīfa is that this category is abrogated and that is also reported from Aḥmad. The well-known position of Mālik is that they no longer have a portion since the Muslims have no need of them. Another report from him is that if there is need for it in a land or at a frontier, the ruler can reinstitute it. Ash-Shāfi'ī has two positions, the soundest is that it is not abrogated, which is also reported from Aḥmad.

Is what the *zakāt* agents take a portion of the *zakāt* or a wage for their work? Abū Ḥanīfa and Aḥmad say it is a wage for their work while Mālik and ash-Shāfi'ī say that it is *zakāt*. Aḥmad says that the agent can be a slave or relative or, in one version, an unbeliever while the others said that it not permitted.

"In the Cause of Allah" means for fighters. Aḥmad says in one transmission that it means *hajj*. Can it be given to a debtor when he is wealthy? Abū Ḥanīfa, Mālik and Aḥmad say no, while ash-Shāfi'ī appears to say yes. They disagree about travellers. Abū Ḥanīfa and Mālik say it refers to someone who is passing through rather than someone starting a journey. Ash-Shāfi'ī says it is both. There are two transmissions from Aḥmad, the most likely is that it is someone passing through.

Distribution: Is it permitted for a man to give all his *zakāt* to one poor person? Abū Ḥanīfa and Aḥmad say it is if it does not make him wealthy. Mālik says it is permitted to give to a wealthy man when one is certain that that will ensure that he does not beg for

money. Ash-Shāfi'ī says that it must be given to a minimum of three of each category.

Exporting zakat: They disagree about transferring *zakat* from one land to another. Abū Ḥanīfa says that it is disliked unless it is for needy relatives or people who have a more pressing need than the people of the land where it is paid. That is not disliked. Mālik says it is not permitted unless there is need in the people of a land and so the ruler transfers it to them after investigation and *ijtihād*. Ash-Shāfi'ī has two positions, the strongest of which it is not permitted. Aḥmad says that it is not permitted.

Excluded recipients: They disagree about how rich a person must be to preclude them being recipients of *zakat*. Abū Ḥanīfa says that anyone who has the *niṣāb* of any wealth is excluded. The well-known position of the Mālikī school is that it is permitted to give it to anyone who has up to forty dirhams. Qāḍī 'Abdu'l-Wahhāb said that Mālik did not define that limit. He says that it can be given to someone who has a house, servant and animal but does not have enough to cover his needs or to someone who has forty dirhams. A scholar can take from the *zakat*, even if he is rich.

The school of ash-Shāfi'ī is that one considers a person's needs. He can take *zakat* if he lacks that, even if he has more than forty dirhams. He cannot take when he has enough, even if he is busy with the knowledge of the *Sharī'a*. If he has to turn to work that would prevent him from obtaining knowledge, then he can take *zakat*. Some Shāfi'ites say that if it is expected that his knowledge will benefit people, he can take it, otherwise not.

Aḥmad says various things. Most Ḥanbalīs say that if someone has fifty dirhams or the equivalent in gold, *zakat* is not lawful for him. Abū Ḥanīfa and Mālik say that if someone is strong and well enough to earn, it is still permitted for him to take *zakat*. Ash-Shāfi'ī and Aḥmad say that it is not permitted. If someone gives his *zakat* to a man and then finds out that he is rich, Abū Ḥanīfa says that it is acceptable. Mālik says that that it is not. Ash-Shāfi'ī has two positions, the sounder being it is not and Aḥmad has two positions.

They agree that it is not permitted to give *zakat* to parents, or children, except for Mālik, who allows it for grandparents and

grandchildren since one is not obliged to support them in his view. Can it be given to one's heirs – brothers and uncles? Abū Ḥanīfa, Mālik and ash-Shāfi'ī permit it. There are two statements from Aḥmad, the most likely of which is that it is not permitted.

Abū Ḥanīfa says that it is not permitted to give it a spouse while ash-Shāfi'ī says that it is. Mālik says that if someone helps to support his wife by what he takes from his wife's *zakat*, it is not permitted. If he uses it to help with other expenses, like poor children by another woman or the like, it is permitted. Aḥmad has two statements, the most likely is that it is forbidden. They agree that it is forbidden to use it to build a mosque or to shroud a corpse.

They agree that *zakat* is unlawful for the Hashimites and vary about which sub-tribes that includes.

Chapter Five

Fasting

They agree that fasting Ramaḍān is an obligation for the Muslims, that it is one of the pillars of Islam, and that the fast is obligatory for every adult, sane, resident Muslim, free of menstruation, who is able to fast. Women who are menstruating or bleeding from childbirth are forbidden to fast. If they do fast, it is not valid and they have to make it up. It is permitted for pregnant and nursing women not to fast if they fear for themselves or their child. If they fast, it is valid. If they break the fast out of fear for the child, they must make it up and make *fidya*, which is a *mudd* for every day according to the predominant school of ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that they owe no *fidya*. Mālik has two positions: one is that *fidya* is obligatory for a nursing woman but not a pregnant one, and the second is that she owes no *fidya* in either case.

Travellers and the sick: They agree that travellers and sick people can break the fast but that it is valid if they fast. If they will be harmed by fasting, it is disliked for them to fast. If someone is fasting in the morning and then travels during the day, all but Aḥmad say that he is not permitted to break it. If a traveller arrives not fasting, a sick person becomes well, a child becomes an adult, an unbeliever becomes a Muslim, or a menstruating woman becomes pure, during the day in Ramaḍān, Abū Ḥanīfa and Aḥmad say that they are obliged to refrain from food for the rest of the day. Mālik says it is recommended and that is the soundest position of the school of ash-Shāfi'ī. When an apostate returns to Islam, he must make up what he missed while he was an apostate according to three of the Imams. Abū Ḥanīfa says not.

Children and mad people: They agree that children and mad people are not required to fast, but a child is commanded to do so at seven and beaten for not fasting at ten. Abū Ḥanīfa says that a child's fast is not valid. If a mad person recovers, he is not obliged

to make up what he missed according to Abū Ḥanīfa and ash-Shāfi'ī. Mālik says that he must and there are two positions from Aḥmad.

The chronically sick and old: Sick people, who have no hope of recovery, and old people do not have to fast. They must make *fidya* according to Abū Ḥanīfa, and that is also the soundest position of ash-Shāfi'ī. Abū Ḥanīfa says that the *fidya* is a half a *ṣā'* of grain every day. Ash-Shāfi'ī says that it is a *mudd* per day. Mālik says that there is no fasting or *fidya*. This is also one position of ash-Shāfi'ī. Aḥmad says that it is half a *ṣā'* of dates or barley or a *mudd* of wheat.

Sighting the moon: They agree that fasting Ramaḍān becomes mandatory when the new moon is sighted or after thirty days of Sha'bān. They disagree about what happens if there are clouds or the sky is obscured by smoke on the 30th of Sha'bān. Abū Ḥanīfa, Mālik and ash-Shāfi'ī say that it is not obligatory to fast. Aḥmad has two positions and his people say it is mandatory. If the sky is clear, the sighting of the moon is established, in the view of Abū Ḥanīfa, by many people sighting it, so there is general knowledge of its appearance, and if it is a cloudy night by one just reputable witness, man or woman, free or slave. Mālik says that only two reputable witnesses are acceptable. Ash-Shāfi'ī has two statements. Aḥmad has two, the most likely being one witness.

One witness is not accepted for the new moon of Shawwāl by agreement. It is not valid to fast the Day of Doubt with three of the Imams. Aḥmad says that if the sky is clear, it is disliked, but that if it is cloudy, it is mandatory. If the new moon is seen during the day, it belongs to the coming night according to three of the Imams, whether it is before or after midday. Aḥmad says that a sighting before midday belongs to the previous day in one position, and to the following day in another.

They agree that when the new moon is seen widely in a land, the rest of the people of the world must fast, although the people of ash-Shāfi'ī consider it sound that the judgement applies to the people of those lands which are near rather than far, and far is considered by

the distance required for shortening the prayer. They agree that lunar calculations are not sufficient to establish the month.

Intention: They agree that an intention is obligatory for the fast of Ramaḍān and that fasting is only valid with an intention. They disagree about making the intention specific. Mālik, ash-Shāfi'ī and Aḥmad in the most evident transmission, say that it must be specific, while Abū Ḥanīfa says it does not have to be. If someone intends to fast in general, it is permitted. They disagree about the time of the intention. Mālik, ash-Shāfi'ī and Aḥmad say that it must be made between sunset and dawn. Abū Ḥanīfa says that it is permitted in the night but that if someone does not make an intention in the night, it is allowed up until midday. Every night requires a new intention with the three, while Mālik says that one intention on the first night of Ramaḍān is enough for the entire month. Three say that a voluntary fast is valid with an intention before midday. Mālik says the intention is not valid if made during the day.

Waking in *janāba*: They agree that if someone is fasting and morning finds him in *janāba*, his fast is sound but that it is recommended to have a *ghusl* before dawn.

Accidental breaking of the fast: They agree that if someone eats, thinking the sun has set or that dawn has not come, and then it becomes clear to him that this was not the case, he must make up the fast. If someone vomits deliberately, Mālik and ash-Shāfi'ī say that it breaks the fast. Abū Ḥanīfa says that doing so does not break the fast unless the vomit fills his mouth. There are two transmissions from Aḥmad, the best known of which is that vomiting does not break the fast unless it is a lot. If some food remains between the teeth or elsewhere and mixes with the saliva, it does not break the fast since it is unavoidable. Injections break the fast except in one transmission from Mālik. Ash-Shāfi'ī says that pouring water into the ear and taking snuff also break the fast.

Cupping and kohl: They agree that cupping is disliked but that it does not break the fast, except for Aḥmad who says that it breaks the fast of the cupper and cupped. If someone eats being unsure about dawn and then it is clear to him that it was dawn, his fast is

agreed to be invalid. It is not disliked by Abū Ḥanīfa and ash-Shāfi'ī for a faster to wear kohl, whereas Mālik and Aḥmad say it is disliked. If he tastes the kohl, it breaks the fast.

Sexual intercourse and *kaffāra*: They agree that someone who has sexual intercourse, without excuse, during the day while he is fasting Ramadan disobeys Allah. His fast is invalid, he must abstain for the rest of the day, and he owes the greater *kaffāra*, which consists of freeing a slave or fasting two continuous months. If he cannot do that, then he must feed sixty poor people. Mālik says that there is choice but considers feeding better. The *kaffāra* is owed by the husband in the soundest school of ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa and Mālik say that both partners owe *kaffāra*. If someone has sexual intercourse on two days, Mālik and ash-Shāfi'ī say that he owes two *kaffāras*. Abū Ḥanīfa says that if he has not done *kaffāra* for the first, then he only owes one. If he does it twice in one day, the second time does not oblige a second *kaffāra*.

They agree that *kaffāra* is not obliged for any fast other than Ramadan. They agree that if the woman is forced or asleep, her fast is invalid and she must make up it, but she owes no *kaffāra*, except in one position reported from Aḥmad. If dawn arrives while someone is having sexual intercourse, Abū Ḥanīfa says that if he withdraws, immediately his fast is valid. If he continues he must make it up but does not owe *kaffāra*. Mālik says that if he withdraws he must make it up, and if he continues, he must do *kaffāra*. Ash-Shāfi'ī say that if he withdraws immediately, he owes nothing, but if he continues, he must make up and do *kaffāra*. Aḥmad says he must make up and do *kaffāra*, whether he withdraws or continues.

Kissing while fasting: Kissing while fasting is forbidden according to Abū Ḥanīfa and ash-Shāfi'ī, in respect of someone who is aroused by it. Mālik says that it is forbidden in all cases. Aḥmad says two things. If someone kisses and has a discharge, that does not break the fast except in the view Aḥmad, who says it breaks it. If he looks with lust and ejaculates, three say his fast is not invalid. Mālik says that it is.

Allowance for travellers: It is permitted for a traveller to eat and have sexual intercourse according to three of the Imams. Aḥmad says he is not permitted to have intercourse. He says that *kaffāra* is owed by a traveller who does that.

Eating and drinking and *kaffāra*: They agree that anyone who intentionally eats and drinks when healthy and resident during the day in Ramaḍān is obliged to make it up and to fast the rest of the day. They disagree about the obligation of *kaffāra*. Abū Ḥanīfa and Mālik say that he must do *kaffāra*. Ash-Shāfi'ī in his most likely position, and Aḥmad say he owes no *kaffāra*. They agree that if someone eats or drinks through forgetfulness, he does invalidate his fast except for Mālik. He says that he must make it up.

Missing days of Ramaḍān: If someone misses some of Ramadan, he should not delay making it up. If he delays it without excuse until the next Ramaḍān has begun, he sins and must make it up as well as paying *fidya* of a *mudd* a day. This is the school of Mālik, ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that he is permitted to delay and owes no *fidya*. If he dies before he can make it up, there is no sin. Mālik says that it is not obligatory for his relatives to pay *fidya* on his behalf unless he has left a bequest to that effect. Ash-Shāfi'ī has two positions, the soundest in the new school being that he must pay *fidya*. In the old school, a relative could fast on his behalf. Aḥmad says that if the fast was to make up for a broken vow, his relative can fast on his behalf, but if it was Ramaḍān, he must pay *fidya* on his behalf.

Six days of Shawwāl: It is recommended for those who fast Ramaḍān to follow it with six days of Shawwāl, except in the case of Mālik who says that it is not recommended. He says in the *Muwattā'*, "I did not see any of our shaykhs fast them. I fear that it may be supposed to be obligatory." They agree that it is recommended to fast "the white days": the 13th, 14th, and 15th of any month.

Best voluntary actions: They disagree about which actions are best after the obligatory ones. Abū Ḥanīfa and Mālik say that after individual obligations, there is no action better than gaining knowledge,

and then *jihād*. Ash-Shāfi'ī says the prayer is the best of the physical actions. Aḥmad says it is *jihād*.

Incomplete voluntary actions: If someone starts a voluntary prayer or fast, ash-Shāfi'ī and Aḥmad recommended that he finish it but says that he can stop without having to make it up. Abū Ḥanīfa and Mālik say that it is mandatory to complete it.

Fasting Jumu'a and using a siwak while fasting: It is not disliked to fast *Jumu'a* on its own as a voluntary fast, according to Abū Ḥanīfa and Mālik, whereas ash-Shāfi'ī and Aḥmad say that it is disliked. It is not disliked to use the *siwāk* while fasting according to three of the Imams, whereas ash-Shāfi'ī says that it is disliked for a faster after midday.

I'tikāf

They agree that *i'tikāf* is prescribed and that it is an act of devotion. It is recommended at all times but especially during the last ten days of Ramaḍān for seeking the Night of Power. They agree that the Night of Power is sought in Ramaḍān and that it falls during it, except for Abū Ḥanīfa who says it comes at an unspecified time in the year. Those who say that it is in Ramaḍān disagree about the most likely night. Ash-Shāfi'ī says the 21st or 23rd, and Mālik says one of the odd nights in the last ten nights. Aḥmad says the 27th.

Place of *i'tikāf*: *I'tikāf* is only valid in a mosque, according to Mālik and Ash-Shāfi'ī, and a Friday mosque is better. Abū Ḥanīfa says that a man's *i'tikāf* is only valid in a mosque in which the group prayer is held. Aḥmad says that it can only be in one in which *Jumu'a* is held. A woman's *i'tikāf* is not valid in a prayer room in her house where she usually prays, according to ash-Shāfi'ī, Mālik and Aḥmad. Abū Ḥanīfa says that it is best that she does it there and that it is disliked anywhere else. Can a woman's husband prevent her from completing *i'tikāf* for which he has given permission? Abū Ḥanīfa and Mālik say that he cannot, whereas ash-Shāfi'ī and Aḥmad say that he can.

Conditions of *i'tikāf*: They agree that *i'tikāf* is only valid with an intention. Is it valid without fasting? Abū Ḥanīfa, Mālik and Aḥmad say that it is only valid when fasting, whereas ash-Shāfi'ī says that it is valid without fasting and did not give a specified length time for it, which was also Aḥmad's position. Two things are reported from Abū Ḥanīfa: one that it is permitted for part of a day, and the second that it is not permitted for less than a day and a night, which is the school of Mālik. If someone vows to do *i'tikāf* for a particular month, it must be continuous. If someone misses a day, he must make up what he missed, although Aḥmad says he should start again. If someone vows a month without being specific, ash-Shāfi'ī and Aḥmad say that he can do it continuously or separately. Abū Ḥanīfa and Mālik say it must be continuous. They agree that if someone intends to retreat for a certain day rather than a night, it is valid, except in the case of Mālik who says he must add a night to the day.

Leaving *i'tikāf*: If someone in *i'tikāf* leaves for any other reason than going to the lavatory or eating and drinking, it is not invalidated unless it is for more than half a day. If the leaving is necessary, like going to the lavatory or doing *ghusl* for *janāba*, then it is permitted by consensus. If he is in retreat in other than a *Jumu'a* mosque and *Jumu'a* comes, the consensus is that he must go to it. Abū Ḥanīfa and Mālik say that his retreat is not invalidated by doing that. Ash-Shāfi'ī has two positions, the soundest being that it is invalidated unless it was a precondition for his retreat. The second is that it is not invalidated. If a person in *i'tikāf* has stipulated something, like visiting a sick person or carrying a bier, and leaves to do it, ash-Shāfi'ī and Aḥmad say that his retreat is not invalidated. Abū Ḥanīfa and Mālik say that it is.

Sexual intercourse during *i'tikāf*: If someone has sexual intercourse, forgetting he is in *i'tikāf*, it is spoiled in the view of Abū Ḥanīfa, Mālik and Aḥmad, but ash-Shāfi'ī says that it is not. If he touches someone's genitals with lust, his retreat is invalid if he ejaculates, according to Abū Ḥanīfa and Aḥmad. Mālik says that it is invalidated whether he ejaculates or not. Ash-Shāfi'ī has two positions, the most likely being that it is invalidated if he ejaculates.

Wearing perfume and keeping silent: It is not disliked for someone in *i'tikāf* to use perfume or wear fine garments according to these three, while Aḥmad says that it is disliked. It is disliked for someone to keep silence until nightfall by agreement. Ash-Shāfi'ī says that if someone makes a vow to remain silent in *i'tikāf*, he should speak and owes no *kaffāra*.

Recommended activities during *i'tikāf*: It is recommended, by consensus, for those in *i'tikāf* to pray, recite and do *dhikr*. They disagree about studying the Qur'an, *ḥadīth* and *fiqh*. Mālik and Aḥmad say that it is not recommended. Abū Ḥanīfa and ash-Shāfi'ī say that it is. The reason behind Mālik and Aḥmad's position is that *i'tikāf* involves confining the self and focusing the heart on the light of insight to reflect on the Qur'an and the meanings of *dhikr*. Whatever disperses aspiration and the occupation of the mind is not appropriate for this act of worship. They agree that no one in retreat may conduct trade or carry out his craft.

Chapter Six

Hajj

Scholars agree that the *hajj* is one of the pillars of Islam and that it is an obligation for every free adult Muslim who is able to perform it once during his lifetime. They disagree about *'umra*. Abū Ḥanīfa and Mālik say that it is *sunna*. Aḥmad says that it is *fard* like the *hajj*. Ash-Shāfi'ī has two positions, the soundest of which is that it is *fard*. It is permitted to perform *'umra* at any time absolutely without restriction and without dislike in the view of Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad. Mālik says that it is disliked to do *'umra* twice in a year, but some Mālikīs say that it can be done every month.

No delay: It is recommended for someone who has to perform *hajj* to hasten to perform it as soon as it becomes possible for him to do so. Ash-Shāfi'ī permits him to delay it. Abū Ḥanīfa, Mālik in his well-known position, and Aḥmad in his best known position say that it must be done straightaway and not delayed when it is mandatory.

Dying before performing hajj: If someone is under the obligation of performing *hajj* and dies before he is in a position to be able to do so, the obligation is lifted from him by agreement. If he dies when he is in a position to do it, ash-Shāfi'ī and Aḥmad say that it is not lifted from him and *hajj* must be made on his behalf using his capital, whether he left a will to that effect or not, it being treated like a debt. Abū Ḥanīfa and Mālik say the obligation is lifted from him by death and his heirs do not have to perform *hajj* for him unless he leaves a will to that effect and it is paid for from the third of his inheritance which he is allowed to bequeath. Abū Ḥanīfa and Aḥmad say that *hajj* is performed for him from his family home, Mālik says from where he made the will, and ash-Shāfi'ī says from the *mīqāt*.

Children performing hajj: They agree that children are not under any obligation to perform *hajj* and the obligation of *hajj* is not fulfilled by them if they do it before reaching puberty. Their *iḥrām* is valid with the permission of their guardian, according to Mālik, ash-Shāfi'ī and Aḥmad, if they have discrimination. Abū Ḥanīfa says that the *iḥrām* of a child is not valid.

Preconditions for hajj: The precondition for the obligation of *hajj* is: ability in respect of the one performing *hajj* for himself, which means having sufficient provision and transport. If someone does not have that but is able to walk and has a means of livelihood he can pursue to provide for him en route, it is recommended for him to perform *hajj*. If he needs to ask help from people, it is disliked for him to perform *hajj*. Mālik says that if he is someone whose custom is to ask for help, he should perform *hajj*. If someone hires servants on the way to *hajj*, his *hajj* is valid except in the view of Aḥmad. If he misappropriates money, means of transport and performs *hajj* using it, his *hajj* is valid, but he is a rebel in the view of Abū Ḥanīfa, Mālik and ash-Shāfi'ī. Aḥmad says that his *hajj* is not allowed. It is agreed that one should not sell his house to perform *hajj*, even if that would give him enough money to do so. If he has the means to perform *hajj* but needs it to buy a house, he can buy the house and delay his *hajj*.

Danger en route for hajj: When guards are required for the journey to *hajj*, three of the Imams say that it is not obligatory to go. Mālik says that if the danger is small and there is safety from treachery, it is still obligatory to perform *hajj*. Is it obligatory for someone to go by sea to *hajj* if it is safe to do so? Abū Ḥanīfa, Mālik and Aḥmad say that it is and there are two statements from ash-Shāfi'ī, the most likely of which is that it is obligatory to go. A woman is not obliged to perform *hajj* unless she has someone she can trust with her, such as her husband or a relative. Abū Ḥanīfa and Aḥmad say it is only permitted for her to perform *hajj* with such a person. *hajj* in a group of women is permitted. Ash-Shāfi'ī says it is permitted with trustworthy women.

Hajj by proxy: If someone obligated is unable to perform *hajj* for himself due to chronic illness, senility or an illness from which he does not expect to recover, and there is someone he can hire to perform *hajj* for him, he must do that. If he does not do that, then three of the Imams say he is still liable for the obligation. Mālik says that such a person does not have to perform *hajj*. *Hajj* is obligatory for anyone who is able to do it himself. If he hires someone to do *hajj* for him, it is agreed that his obligation of *hajj* is discharged, except in one view from Abū Ḥanīfa. If a blind person can find someone to lead him and guide him, he must perform *hajj* himself in the opinion of three of the Imams and they do not permit him to delegate. Abū Ḥanīfa says that the obligation is a matter of property and so he can delegate.

It is agreed that it is permitted for a proxy to perform the obligatory *hajj* or a voluntary *hajj* on behalf of a dead person in the view of Abū Ḥanīfa and Aḥmad. Ash-Shāfi'ī has two statements, the soundest of which is that doing so is forbidden. No one can perform *hajj* for someone else when he has not yet performed it for himself. If he does *hajj* for someone else and owes it himself, it becomes his *hajj*. This is the best known position in the school of Aḥmad. Another view is that it is not valid for either of them. Abū Ḥanīfa and Mālik say that it is permitted but disliked. It is not permitted for someone to perform a voluntary *hajj* when he still owes the obligatory one, in the view of ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa and Mālik say that it is permitted to perform a voluntary *hajj* before the obligatory one. Ash-Shāfi'ī considers it permitted to hire someone to perform *hajj*; Mālik permits it but dislikes it; and Abū Ḥanīfa forbids it.

The different methods of performing *hajj*: Three of the Imams agree that the *hajj* is sound when performed by any of the three well-known methods: *ifrad*, *tamattu'* and *qiran*. Abū Ḥanīfa says that a Makkan may only perform *ifrad*. They disagree about which is best. Abū Ḥanīfa says *qiran*, then *tamattu'* then *ifrad*. Mālik says *ifrad*, *tamattu'*, and then *qiran*. There are two positions from ash-Shāfi'ī. The sounder is *ifrad*, then *tamattu'*, then *qiran*. A group of Shāfi'ites say *tamattu'* and then *ifrad*, which is the position of Aḥmad. It is not permitted, by agreement, to decide to add *hajj* to 'umra once the first *ṭawāf* of the 'umra has been completed. Abū

Ḥanīfa and Mālik allow adding 'umra to *hajj* before the standing on 'Arafa, but Aḥmad forbids that. Ash-Shāfi'ī has two positions.

Sacrifice for *tamattu'* and *qiran*: It is obligatory for someone doing *tamattu'* to slaughter (in expiation for leaving *ihrām*) if he is not one of those living at the Masjid al-Ḥarām. A person doing *qiran* also owes a sacrifice, namely a sheep. Abū Ḥanīfa and ash-Shāfi'ī say that a sacrifice is obligatory when someone assumes *ihrām* for *tamattu'*. Mālik says that it does not have to be made until he has stoned the *Jamra al-'Aqaba*. They disagree about the time it is permitted to do it. Abū Ḥanīfa and Mālik say that he is not permitted to sacrifice before the Day of Sacrifice. Ash-Shāfi'ī has two positions, the most evident being that it is done when he finishes 'umra.

Fasting in lieu of sacrificing: When someone does not have a sacrificial animal, he should fast instead for three days during the *hajj* and for seven when he returns home. Mālik and ash-Shāfi'ī say that he may only fast after assuming *ihrām* for *hajj*. Abū Ḥanīfa and Aḥmad, in one position, say that once he has assumed *ihrām* for 'umra, he is permitted to fast. Is it permitted to fast on the days of *tashrīq*? Ash-Shāfi'ī has two positions. The more evident one is that it is not permitted, which is the school of Abū Ḥanīfa. The old school was that it is permitted, which is the school of Mālik and is also reported from Aḥmad. Fasting instead of sacrificing is not precluded by missing the fast of the day of 'Arafa, except in the view of Abū Ḥanīfa who says that fasting is then not an option and the sacrifice is confirmed as his responsibility. He must not delay the fast. Aḥmad says that if it is delayed without reason, a sacrifice is owed. If it is delayed to the following year, a sacrifice must be made. If someone becomes able to sacrifice while fasting, Abū Ḥanīfa says that he must change it in favour of sacrifice.

As for fasting the seven further days, ash-Shāfi'ī says two things about their time, the sounder of which is that he fasts them when he returns to his people, which is the position of Aḥmad. The second is that he is permitted to fast them before he returns home, after leaving Makka, which is the position of Mālik, or that he can fast them when he has finished the *hajj*, even if he is still at Makka, which is the position of Abū Ḥanīfa.

Coming out of *iḥrām* when performing *tamattu'*: When someone doing *tamattu'* finishes *'umra*, he should come out of *iḥrām*, whether or not he has a sacrifice, according to Mālik and ash-Shāfi'ī. Abū Ḥanīfa and Aḥmad say that when someone has an animal to sacrifice, he cannot leave *iḥrām* until the Day of Sacrifice. Such a person remains in *iḥrām* and takes on *iḥrām* for the *ḥajj* on top of *'umra*, and thus becomes someone doing *qirān*."

The mīqāts

They are points in both time and place. The time is well-known and understood and one can only assume *iḥrām* for *ḥajj* during that time, which is Shawwāl, Dhū'l-Qa'da and the first ten days of Dhū'l-Ḥijja, according to Abū Ḥanīfa and Aḥmad, who include the Day of Sacrifice. Mālik says Shawwāl, Dhū'l-Qa'da and Dhū'l-Ḥijja. Ash-Shāfi'ī says Shawwāl, Dhū'l-Qa'da and the first ten days of Dhū'l-Ḥijja. It is disliked for someone to assume *iḥrām* outside of that time, but still constitutes *ḥajj* in the view of Abū Ḥanīfa and Mālik, but the soundest position of ash-Shāfi'ī is that it does not constitute *'umra* or *ḥajj*. As for place, it is Makka for the Makkans. For those who are far from the *mīqāt*, they can assume *iḥrām* from their homes or from the *mīqāt*. They disagree about which is the best. Abū Ḥanīfa says that it is best from the house, and that is the position of ash-Shāfi'ī via ar-Rafi'ī. Mālik and Aḥmad say it is best from the *mīqāt*, and that is the position of ash-Shāfi'ī via an-Nawawī.

Passing the *mīqāt*: Anyone who reaches a *mīqāt* cannot pass it without assuming *iḥrām*. If he does, he must return to the *mīqāt* to assume *iḥrām*. It is agreed that if the way is perilous or the time is short and he cannot return to the *mīqāt* to assume *iḥrām*, he assumes *iḥrām* where he is and owes a sacrifice for passing the *mīqāt* without *iḥrām*.

Iḥrām and what is forbidden in it

Perfuming the body when assuming *iḥrām* is recommended with three, but Mālik says it is not permitted to use a perfume whose scent lingers. If it remains, he has to wash it off. It is disliked to use perfume on *iḥrām* garments. It is best to enter *iḥrām* after a two *rak'at* prayer for *iḥrām*, except in the sound position from ash-Shāfi'ī, which is that someone enters *iḥrām* when his mount rises if he is riding, or when he sets off on his way if he is walking. Mālik, Ash-Shāfi'ī and Aḥmad say that *iḥrām* begins with the intention for it. Uttering the *talbiya* without the intention does not begin *iḥrām*.

Talbiya: The *talbiya* is mandatory according to Abū Ḥanīfa and Mālik, but Abū Ḥanīfa says that if someone is driving sacrificial animals, intending to enter *iḥrām*, he enters *iḥrām* even if he does not say it. If he is not driving animals, he must say it. Mālik says that it is mandatory and he must sacrifice if he omits it. Ash-Shāfi'ī and Aḥmad says that it is *sunna*. They say that *talbiya* stops at the *Jamra al-'Aqaba* and Mālik says that it stops after midday on the Day of 'Arafa.

Things forbidden in *iḥrām*: *Iḥrām* makes certain things unlawful. One of them is wearing stitched garments or covering the head for men. Stitched garments on any part of the body are forbidden, as well as anything which is sewn or woven together, such as a turban. Also forbidden are: sexual intercourse, kissing, touching with sexual desire, marrying and giving in marriage, hunting, using perfume, removing hair or nails, and oiling the hair and beard with any oil. The same applies to women in all respects except that she may wear stitched clothes and should cover her head. She must uncover her face.

They disagree about whether someone in *iḥrām* can shade himself with something which does not touch his head. Abū Ḥanīfa and ash-Shāfi'ī say that it is permitted while Aḥmad and Mālik say that it is not. Mālik says that he owes *fidya* if he does and that is the soundest position of Aḥmad. If he wears a coat on his shoulders but does not put his hands in its sleeves, he must do *fidya* according to three of the Imams, but Abū Ḥanīfa says he need not. If he cannot

find a waist-wrapper, he should wear trousers and owes no *fidya* according to ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa and Mālik say that he must pay *fidya*. If someone cannot find any sandals, he may wear leather socks and cut them off below the ankles in the view of Abū Ḥanīfa, Mālik and ash-Shāfi'ī. Abū Ḥanīfa says he must pay *fidya*. Aḥmad says he may not wear them without cutting them. Ash-Shāfi'ī and Aḥmad say that it is not unlawful for a man to cover his face. Abū Ḥanīfa and Mālik say it is.

Perfume in *ihrām*: It is forbidden to use perfume on the clothing or the body. Abū Ḥanīfa says that it is permitted to put musk on the outside of one's clothing but not on the body. One can fumigate oneself with aloes and incense. Abū Ḥanīfa says that it is permitted to put perfume in food and there is no *fidya* for eating it, even if its scent is clear. Mālik agreed with that. Abū Ḥanīfa says that there is no prohibition against using aromatic herbs. Henna is not considered perfume by three of the imams, but Abū Ḥanīfa says that it is a perfume for which there is *fidya*.

Marriage while in *ihrām*: It is not permitted for someone in *ihrām* to contract a marriage for himself or for anyone else, and he cannot be a *wakīl* by consensus. If he does so, the contract is invalid in the view of three Imams, Abū Ḥanīfa being the exception. He can remarry the woman in the opinion of all except in the view of Aḥmad who does not allow it.

Killing game in *ihrām*: If someone in *ihrām* kills game by mistake, he must pay reparation for doing so and owes its price to its owner if it is owned. Mālik and Aḥmad say that he is not obliged to pay for killing owned game. It is unlawful to assist someone in killing game by pointing it out, but Mālik and ash-Shāfi'ī say that someone who points it out owes no reparation. Abū Ḥanīfa says that both parties owe full reparation, even if a group is involved. It is forbidden for someone in *ihrām* to eat what he has killed, except in the view of Abū Ḥanīfa who says that it is not. If the game is not an animal which can be eaten, or the source of something which can be eaten, it is not unlawful for the one in *ihrām* to kill it. Abū Ḥanīfa says that it is unlawful for the person in *ihrām* to kill all wild beasts except bears.

Doing something forbidden inadvertently: If someone in *ihrām* uses oil or perfume, forgetting that he is in *ihrām*, or ignorant of the prohibition, ash-Shāfi'ī says that he does not have to do *kaffāra*. Abū Ḥanīfa and Mālik say that he must. If someone forgetfully puts on a shirt and then remembers he should remove it over his head although some Shāfi'ites say that he must cut or rip it off. If he cuts his hair or clips his nails, forgetfully or in ignorance, he owes no *fidya*, except according to one position reported by ash-Shāfi'ī. If he forgetfully kills game or in ignorance, it is agreed that he owes *fidya*. If he forgetfully has sexual intercourse or in ignorance, he owes *kaffāra* except for one position of ash-Shāfi'ī, which is that he does not have to do it and his *hajj* is not spoiled.

What doing things forbidden during *hajj* incurs

Cutting hair: They agree that there is a choice in the *kaffāra* for cutting hair between slaughtering a sheep, feeding six poor people three *sa's*, or fasting for three days. They disagree about the amount of hair cut which necessitates *kaffāra*. Abū Ḥanīfa says that it is shaving a quarter of the head. Mālik says that it is shaving any of the head. Ash-Shāfi'ī says three hairs. There are two positions from Aḥmad, one is three hairs and the other a quarter of the head.

Sexual intercourse: If someone has sexual intercourse during *hajj* or *'umra* while still in *ihrām*, his practices are nullified. Ash-Shāfi'ī and Aḥmad say that he must sacrifice a camel. Abū Ḥanīfa says that if he has sexual intercourse before 'Arafa, his *hajj* is invalidated and he owes a sheep. If it is after 'Arafa, his *hajj* is not invalidated and he owes a camel. The opinion of Mālik is the same as that of ash-Shāfi'ī. The state of *ihrām* is not removed by sexual intercourse in either case. Abū Ḥanīfa and ash-Shāfi'ī recommend that the couple separate (for the rest of the *hajj*) while Mālik and Aḥmad say that it is mandatory for them to do so. If someone has sexual intercourse a second time when he has not expiated the first instance, Abū Ḥanīfa says that he just owes a sheep for the first. Mālik says that nothing is owed for the second time. Ash-Shāfi'ī has two positions. One is that a second *kaffāra* is obliged and it is either a camel or a sheep. The

second view, which is sounder, is that there is only one *kaffāra*. Aḥmad says that if someone has expiated the first occasion, he must pay a camel for the second. If he kisses with desire or has relations which stop prior to genital penetration and he ejaculates, his *hajj* is not nullified, but he owes a camel. Mālik says that his *hajj* is nullified and he owes a camel.

Killing game: If someone kills game, he owes the equivalent of it in livestock, according to Mālik and ash-Shāfi'ī. Abū Ḥanīfa says that he only has to pay the price of the game. Buying camels in the *Haram* and slaughtering them is permitted by three, but Mālik says that they must be driven from outside the *Haram* into the *Haram*. If a group participate in killing game, they owe one repayment according to three Imams, while Abū Ḥanīfa says that each of owes full repayment. All except Mālik are agreed that doves and similar birds entail a sheep with three, while he says that the killer is liable for the price of a Makkan dove.

Cutting down trees and plants: All the Imams are agreed that it is forbidden to cut down any trees in the *Haram*, and there is liability for them according to ash-Shāfi'ī. A cow is owed for large trees and a sheep for small ones. Mālik says there is no penalty but that it is a sin. Abū Ḥanīfa says that if someone cuts what a human being has cultivated, there is no reparation. If he cuts what Allah has made grow, he owes repayment. It is forbidden to cut the grass of the *Haram* for anything other than medicine or fodder. All except Abū Ḥanīfa agree that it is permitted to cut it for such purposes while he says that it is not permitted. He says that the game of Madina is forbidden, as is cutting its trees. Is there liability for that? Ash-Shāfi'ī has two positions, the new one being that there is not, which is the school of Abū Ḥanīfa. The old position is that someone is liable for what he kills and cuts. That is the position of Mālik and Aḥmad. Sacrifices for violations of *iḥrām* must be slaughtered in the *Haram* and given to the poor there. Mālik says that such sacrifices are not specific to any one place.

Description of the *hajj*

Visiting Makka for other than *hajj* or 'umra: If someone goes to Makka not for religious reasons but to visit or trade, is he under obligation to enter *iḥrām* for *hajj* or 'umra, or is that only recommended? Ash-Shāfi'ī has two statements, the sounder of which is that it is recommended, and the second is that it is mandatory unless he is going to repeatedly enter it, like a wood collector or hunter. Abū Ḥanīfa says that it is not permitted for anyone living outside the *mīqāt* to enter the *Haram*, except in *iḥrām*. Three consider the *Tawāf* of Arrival to be *sunna*, and Mālik says that if someone omits it voluntarily, he owes a sacrifice.

Doing *tawāf*: The preconditions for *tawāf* include purity and covering the private parts with three of the Imams, while Abū Ḥanīfa says that they are not a precondition for its validity. If someone returns home without doing *tawāf*, he owes a sacrifice. Kissing the Stone and placing the forehead on it is *sunna* because placing the forehead on it includes kissing and more, but Mālik says that putting the forehead on it is an innovation. Someone doing *tawāf* should touch the Yamanī Corner with his hand which he then kisses, but ash-Shāfi'ī says that he should not kiss it and Abū Ḥanīfa says that he should not even touch it. Mālik says that he should touch it but not kiss his hand, merely placing it on his mouth. Aḥmad says that he should kiss it. The other two corners are not touched. Trotting and baring the right shoulder are recommended by three, but Mālik says that baring the right shoulder is not known and he did not see anyone do it. He owes nothing if he does not trot or bare his shoulder. Recitation during *tawāf* is recommended by a group of scholars, whereas Mālik dislikes it.

Purity in *tawāf*: Those who say that purity is mandatory for *tawāf* are Mālik, ash-Shāfi'ī and Aḥmad. They say that whoever breaks *wuḍū'* during *tawāf* should do *wuḍū'* and continue. Ash-Shāfi'ī says he should start again from the beginning. The two *rak'ats* of *tawāf* are obligatory, according to Abū Ḥanīfa, and that is the position of ash-Shāfi'ī, Mālik and Aḥmad while one position of ash-Shāfi'ī is that it is *sunna*.

Sa'y : *Sa'y* is a pillar of the ḥajj and 'umra, according to Mālik and ash-Shāfi'ī. Abū Ḥanīfa says that it is mandatory and can be restituted by sacrifice. Two things are reported from Aḥmad, one is that it is mandatory and the other recommended. Three say that one must begin at Ṣafā and end at Marwa and say that it does not count if one begins at Marwa, while Abū Ḥanīfa says that there is no harm if it is reversed.

Standing at 'Arafa: Three of the Imams say that it is recommended to combine night and day in standing at 'Arafa, but Mālik says it is mandatory to do that. Being mounted or on foot are the same in the view of Abū Ḥanīfa and Mālik, and is the preferred position of ash-Shāfi'ī, but Aḥmad says that being mounted is better. If 'Arafa falls on Friday, *Jumu'a* is not prayed. *Zuhr* is prayed with two *rak'ats* according to the great majority of scholars. Abu Yusuf says that he prayed *Jumu'a* at 'Arafa. Abū Yūsuf asked Mālik about this question in the presence of Hārūn ar-Rashid and Mālik said, "Our sources in Madina know that there is no *Jumu'a* at 'Arafa."

Overnighting at Muzdalifa: Spending the night at Muzdalifa is a practice but not a pillar of the ḥajj. There is consensus that *Maghrib* and 'Ishā' are joined at the time of 'Ishā' at Muzdalifa. Mālik, ash-Shāfi'ī and Aḥmad permit them to be prayed, each in its time, but Abū Ḥanīfa does not.

Stoning: Stoning is mandatory. It is not permitted to use anything but stones with three, whereas Abū Ḥanīfa permits it with whatever comes from the ground. It is recommended to stone after sunrise. If someone stones after midday, that is permitted in the view of ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that stoning is only permitted after dawn. The *talbiya* ends when the *Jamra al-'Aqaba* is stoned according to three imams, while Mālik says that it ends after midday on the day of 'Arafa.

The Day of Sacrifice: The actions of the Day of Sacrifice are four: stoning, sacrifice, shaving and *ṭawāf*. Three recommend that they be done in that order, but Aḥmad says that the order is mandatory. It is best to shave the head. They disagree about the minimum of what is obligatory. Abū Ḥanīfa says a quarter of the hair. Mālik says all or

most. Ash-Shāfi'ī says three hairs are enough. If someone is bald, he should run the razor over his head. Abū Ḥanīfa says that doing that is not recommended.

Sacrifice: Sacrifice is recommended. It is recommended to mark the sacrificial animals, if they are camels or cattle, on the right side of the hump in the view of ash-Shāfi'ī and Aḥmad. Mālik says on the left side, while Abū Ḥanīfa says it is unlawful to mark them at all. It is recommended to garland camels with sandals and all except Aḥmad say that this is done with sheep as well. He says that it is not recommended to garland sheep. When a person's sacrifice is voluntary, the animal remains his property until he slaughters it. If it is on account of a vow, he does not own it, the poor do, and he cannot sell or exchange it according to all but Abū Ḥanīfa, who says that he can sell and exchange it. He can drink its extra milk although Abū Ḥanīfa says that that is not permitted. He cannot eat any animal he is obliged to sacrifice as expiation. Abū Ḥanīfa says that he can eat the sacrifices of *qirān* and *tamattu'*, and Mālik says he can eat from all of them, except those sacrificed in expiation for hunting and as *fidya* for injury. Sacrificing at night is disliked and Mālik says that it is not permitted. The best place to sacrifice is Marwa for 'umra and Mina for ḥajj. Mālik says that someone doing 'umra may only slaughter at Marwa and someone doing ḥajj only at Mina.

Ṭawāf al-Ifāda: *Ṭawāf al-Ifāda* is a pillar of the ḥajj by agreement. The beginning of its time is the middle of the night before the Day of Sacrifice. The best time is midday on the Day of Sacrifice. Abū Ḥanīfa say that its time begins at dawn on the Day of Sacrifice and ends on the second of the Days of *Tashrīq*. If anyone delays it to the third day, he owes a sacrifice.

Stoning the jamras: One of the obligatory parts of ḥajj is to stone the three *jamras* in the Days of *Tashrīq* after midday, with seven pebbles each. The first to be stoned is the one closest to the Khayf mosque, then the middle one and then the *Jamra al-'Aqaba*. Abū Ḥanīfa says that if someone reverses the order, he should repeat the stoning but that if he does not do so, he does not owe any sacrifice.

The “numbered days”: The “numbered days” mentioned in the Qur’an are the Days of *Tashrīq* and “the known ones” are the first ten days of Dhū’l-Hijja, according to ash-Shāfi‘ī and Aḥmad. Mālik says that they are three of the Days of Sacrifice and the two days after them. Abū Ḥanīfa says that they are the Day of ‘Arafa and first of the Days of *Tashrīq*.

The Farewell *Tawāf*: The Farewell *Tawāf* is one of the obligatory parts of *hajj*, according to the well-known position of the *fuqahā* except for someone who stays. Abū Ḥanīfa says that it is not cancelled by staying.

Being prevented from accomplishing the *hajj*

By an enemy: If someone is obstructed by an enemy from standing on ‘Arafa, *tawāf* or *sa’y* but there is another route by which he can reach them, he must take it, whether it is near or far, and he should not come out of *iḥrām*. If he takes it and by doing so misses *hajj*, or if there is no other alternative route, he should come out of *iḥrām* after ‘*umra*.

By illness: If someone is prevented by illness, then the most likely school of ash-Shāfi‘ī is that if he stipulated he could leave *iḥrām*, then he can. Mālik and Aḥmad say that he cannot leave it because of illness, and Abū Ḥanīfa says that he can absolutely.

Is a husband’s permission needed: A woman can assume *iḥrām* for *hajj* without her husband’s permission in the view of Abū Ḥanīfa, Mālik and Aḥmad. The position of ash-Shāfi‘ī varies about this, and the most likely is that he forbids it. Can the husband make his wife come out of *iḥrām*? There are two statements from ash-Shāfi‘ī, the more evident is that he can. Abū Ḥanīfa and Mālik say that he cannot.

Chapter Seven

Sacrifice by People not on *Hajj*

It is prescribed in the *Shari‘a* by agreement. They disagree about whether it is *sunna* or obligatory. Mālik, ash-Shāfi‘ī, Aḥmad and the Ḥanafīs say that it is a confirmed *sunna*. Abū Ḥanīfa says that it is obligatory for those resident in cities. The *niṣāb* of *zakat* is considered when determining if it is obligatory. Ash-Shāfi‘ī says that its time is after sunrise on the Day of Sacrifice when there has been enough time for the ‘*Id* prayer and two *khuṭbas*, whether the Imam has prayed it or not. Abū Ḥanīfa, Mālik and Aḥmad say that one of the preconditions for the validity of sacrifices is that the imam has prayed and given the *khuṭba*, but Abū Ḥanīfa says that it is permitted for people in an agricultural region to sacrifice at the second dawn (i.e. the time of *Fajr*). Ash-Shāfi‘ī says that the end of its time is sunset on the last of the Days of *Tashrīq*. Abū Ḥanīfa and Mālik say that it ends on the second of the Days of *Tashrīq*. If the sacrifice is mandatory, the sacrifice is not cancelled when the Days of *Tashrīq* end. A sacrifice must still be made according to all the Imams except Abū Ḥanīfa, who says that it is cancelled.

Leaving hair and nails: When the first ten days of Dhū’l-Hijja have begun and someone intends to sacrifice, Mālik and Ash-Shāfi‘ī recommend that he should not have his hair cut or trim his nails until he has sacrificed. If he does, that is disliked. Abū Ḥanīfa says that it is permitted and neither recommended or disliked while Aḥmad says it is unlawful.

Acceptable animals: When someone is restricted to a particular animal to sacrifice and the animal is healthy, but then a defect befalls it, that does not prevent its acceptability according to all but Abū Ḥanīfa, who says it does. An animal which is slightly ill is allowed. A major illness which affects the meat, or mange which is evident, precludes it being acceptable for sacrifice. No blind or one-eyed animal is acceptable. An animal with a broken horn is disliked,

and Aḥmad says that it is not acceptable. Mālik and ash-Shāfi'ī say that lame animals are not acceptable, but Abū Ḥanīfa says that they are. The Imams are agreed that an animal with part of its ear cut off is not acceptable, nor is one with the tail cut off because some meat is missing.¹ If a slight amount is cut, then the most likely position of the Shāfi'ī school is that it is forbidden. Later Shāfi'ītes say that it is all right. Abū Ḥanīfa and Mālik says that if the minimum is missing, it is allowed, but if it is a lot, it is not. Aḥmad says more than a third.

Delegation: It is permitted to delegate someone else to slaughter, even a *dhimmī*, although it is disliked by three of the Imams. Mālik says that it is not permitted to delegate a *dhimmī*.

Mentioning Allah: It is recommended to mention Allah in the sacrifice and other things. If someone omits to do that, Abū Ḥanīfa says that if it is deliberate, the sacrifice may not be eaten. If he forgets, it may be eaten. Mālik says that if it is deliberate, it not permitted, and if it is out of forgetfulness, there are two views. A third view is that it is absolutely lawful, whether it is deliberate or due to forgetfulness. Ash-Shāfi'ī says that if someone forgets, it does not matter. Aḥmad says that it may not be eaten if it is deliberate, and there are two positions if it is out of forgetfulness. Ash-Shāfi'ī recommends saying the prayer on the Prophet when slaughtering. Abū Ḥanīfa and Mālik say that doing so it is disliked. Aḥmad says that no particular formula is prescribed, but that the words, "O Allah, this is from You and to You, so accept it from me" may be used.

Eating the meat: If the sacrifice is voluntary, it is recommended to eat some of it. Some say it is mandatory. Ash-Shāfi'ī says it is best to eat a third, give away a third as gifts and give a third as charity. If it is on account of a vow, none of it may be eaten by the person who has made the vow. It is not permitted to sell any sacrifice, whether from a vow or on a voluntary basis, nor to sell the skin.

Best animals to sacrifice: Camels are the best animals to sacrifice, then cattle, then sheep. Mālik says that sheep are best, then cattle, then camels. A camel fulfils the duty for seven people, and a cow

1. This is in reference to species of sheep which have a great deal of meat in their tails which is normally eaten.

and sheep for one. Seven can share in a camel, whether they are from separate or the same households. Mālik says that if it is voluntary and they are from the same household, it is permitted.

'Aqīqa: The *'aqīqa* is *sunna*, according to Mālik and ash-Shāfi'ī. Abū Ḥanīfa says that it is permitted but not a recommended *sunna*. Aḥmad has two statements, the best known of which is that it is *sunna* and the second that it is mandatory. It consists of two sheep for a boy and one for a girl. Mālik says that there is one for a boy and one for a girl. It should be done on the seventh day after the birth of the child.

Chapter Eight

Vows

A vow is a promise to carry out an act of devotion and it is binding. If it is a vow to perform an act of disobedience, it is not permitted to carry it out, and they disagree about whether *kaffāra* is obliged for it. Abū Ḥanīfa, Mālik and ash-Shāfi'ī say that there is no *kaffāra* for not fulfilling the vow. Aḥmad has two statements, one is that the vow is binding but one is not permitted to do it and so there must be *kaffāra*. To vow something unlawful is not valid, like fasting the 'īd or fasting when menstruating. If someone vows to slaughter his son, nothing is binding on him with ash-Shāfi'ī. Abū Ḥanīfa and Mālik say that he is obliged to slaughter a sheep. Aḥmad has two versions, one is that he must slaughter a sheep and the other that he must expiate the oath. If he vows to kill himself, three say that nothing is obliged of him, and Aḥmad has two reports, one being that he should slaughter a ram, and the second that he should expiate the oath.

General vows: If someone makes a general vow, it is valid in the view of Abū Ḥanīfa, Mālik and Aḥmad, and if he does not fulfil it, he owes the expiation of an oath for it. Ash-Shāfi'ī has two positions, one like that of the rest, and the second that it is not valid unless it is actually connected to something.

Vows in an argument: If someone vows an act of devotion by way of argument, like saying, "If I speak to so-and-so, then I owe Allah a fast or *ṣadaqa*", the most likely position in the school of ash-Shāfi'ī is that he can choose between expiation of the oath and doing what he said. Abū Ḥanīfa say that he must do what he said in every case and he is not permitted to expiate it, and the other position is that there is *kaffāra*. Mālik says that he can expiate and also says that he should do what he has vowed.

Vowing to perform *hajj*: If someone vows to perform *hajj*, he must carry out the vow and nothing else is permitted, in the view of Abū

Ḥanīfa and Mālik, but ash-Shāfi'ī has two statements, one of them is that it must be fulfilled, which is the sounder, and the second is that he can choose between fulfilling it and expiating the oath. Aḥmad has two statements.

Vowing to give away one's wealth: If someone vows to give away his money as *ṣadaqa*, ash-Shāfi'ī says that he must give away all his wealth. The Ḥanafīs say that it is recommended to give away a third of all his zakatable wealth, and they have another statement that he should give it all away. Mālik says that he should give away a third of all his wealth. Aḥmad has two statements: one is that he gives away a third, and the other is that refers to the property which he meant.

Vowing to pray in the *Masjid al-Ḥarām*: If someone vows to pray in the *Masjid al-Ḥarām*, he must do it. The same holds true for the Madina Mosque and al-Aqsa Mosque according to Mālik and Aḥmad, and that is the soundest position of ash-Shāfi'ī. Abū Ḥanīfa says that someone cannot make a vow to pray in a particular mosque.

Vowing to fast a certain day: When someone vows to fast a certain day and breaks his vow for a reason, he must make it up with three, but Mālik says that if he breaks it on account of illness, he does not have to make it up. If he vows to fast ten days, he can fast them continuously or separately.

Vowing to go to the *Masjid al-Ḥarām*: If someone vows to go to the *Masjid al-Ḥarām*, but has no intention for *hajj* or 'umra or vows to walk there, then the famous position of Mālik and Aḥmad is that he is obliged to intend it as *hajj* or 'umra and that he must walk from his home. Abū Ḥanīfa says that he does not have to walk unless he vowed to walk. Ash-Shāfi'ī has two statements about a vow to walk to Madina or al-Aqsa, the soundest being that it is not binding, as Abū Ḥanīfa also says. The second is that it is binding, as Mālik and Aḥmad say.

Vowing a permissible action: If someone vows to do something merely permissible, like, "By Allah, I will walk to my house" or

“ride my horse” or “put on my clothes”, he owes nothing with Abū Ḥanīfa and Mālik. Ash-Shāfi‘ī says that if he does something other than what he stated, he owes the *kaffāra* of an oath, even if he is not obliged to do such an action. Aḥmad says that the oath is binding and he has a choice between doing it and *kaffāra*.

Chapter Nine Permissible Foods

Horses: Horses are lawful to eat for the Shāfi‘īs, Aḥmad, and the later Ḥanafīs. Mālik says that horse meat is disliked and in the more likely position actually unlawful. Abū Ḥanīfa says it is unlawful. The flesh of mules and domestic donkeys is unlawful according to three Imams, while there is disagreement from Mālik about that, it being reported that it is either strongly disliked or forbidden.

Birds: Abū Ḥanīfa, ash-Shāfi‘ī and Aḥmad agree that all birds with talons which attack others, like falcons, hawks and eagles, are unlawful to eat, as well as those without talons which eat corpses, such as vultures and crows. Mālik allows them absolutely. Other birds are allowed. It is famous that there is no dislike of eating those it is forbidden to kill, like swifts, hoopoes, bats, owls and peacocks, except for ash-Shāfi‘ī who considers them unlawful.

Animals with claws etc.: They agree that animals with claws which hunt, like lions, leopards, lynxes, wolves, cats and elephants are unlawful to eat with the exception of Mālik. He allowed such meat but considered it disliked. Rabbits are lawful. Varying things are said about giraffes. Foxes and hyenas are lawful with ash-Shāfi‘ī and Aḥmad, but disliked according to Mālik. Abū Ḥanīfa says they are unlawful. Rock badgers and jerboas are lawful in the view of Mālik and ash-Shāfi‘ī whereas Abū Ḥanīfa says they are unlawful.

Other animals: Eating small creeping ground creatures like mice is forbidden by three Imams, while Mālik says it is disliked. Locusts, however, can be eaten dead in any case, but Mālik says that any which have died without any discernible reason should not be eaten. Hedgehogs are lawful in the view of Mālik and ash-Shāfi‘ī, while Abū Ḥanīfa and Aḥmad say that they are unlawful. Mālik says that there is no harm in eating moles and snakes when they are slaughtered. They disagree about weasels. Abū Ḥanīfa and Aḥmad say they are unlawful, and that is the soundest position of ash-

Shāfi'ī. Mālik says that they are disliked. Abū Ḥanīfa considered wildcats unlawful, which is the soundest position of ash-Shāfi'ī. Mālik says their meat is disliked. There are two positions from Aḥmad: permitted and unlawful.

Fish: Fish are lawful by agreement. Abū Ḥanīfa says that the only aquatic creatures which may be eaten are fish. Mālik says fish and other things, including shell fish, crabs, frogs, otters and dolphins but he dislikes eating dolphins. Aḥmad says that everything that lives in water may be eaten except crocodiles, frogs, and swordfish, but anything other than fish must be properly slaughtered. The Shāfi'ītes disagree: some allow every aquatic creature, which is the soundest position, but some say only fish, and some exclude otters, dolphins, snakes and the like which resemble land creatures and may not be eaten.

Animals which eat impurities (*jalāla*): It is disliked by three Imams to eat camels, sheep or chickens which eat dung (*jalāla*) and Aḥmad says that their flesh, milk and eggs are unlawful. If they are kept and fed with pure food until the smell goes, they become lawful. It is said that that means forty days for camels and cattle, seven days for sheep and three days for chickens.

Carrion: If someone is forced by hunger to eat carrion he may do so. Ash-Shāfi'ī has two positions about eating it, the soundest being that it is mandatory. May someone eat their fill or only enough to survive? Ash-Shāfi'ī has two positions, one being that he should not eat his fill, which is the school of Abū Ḥanīfa, and the second is that he should, which is the position of Mālik and one view from Aḥmad. The most likely position of ash-Shāfi'ī is that if lawful food is near, he is only allowed enough carrion to ensure survival, but if someone is completely cut off from permitted food, he may eat his fill and take provision from it. If someone is forced to choose between carrion and food belonging to someone else when the owner is absent, Mālik, most of the Shāfi'ītes and some Ḥanafīs say that he should eat the food of that person and that he is liable to pay for it. Aḥmad and some Ḥanafīs and Shāfi'īs say that he should eat the carrion.

Fat in which an animal dies: In the case of fats like ghee and oil, when a mouse dies it, if the substance is solid, then what the mouse has touched is discarded and the rest is pure and can be eaten. If it is liquid, it is all impure. Can an impure liquid be purified? The soundest position according to ash-Shāfi'ī is that it is impossible to purify it.

Fat forbidden to the Jews: They disagree about the fat which Allah has forbidden to the Jews when they slaughter and whether it is disliked for Muslims or not. Abū Ḥanīfa and ash-Shāfi'ī say that it is permitted. Two things are reported from Mālik: one is dislike and the other prohibition. Aḥmad has two statements as well.

Wine: As for someone who is forced to drink wine due to thirst or for medicine, Abū Ḥanīfa says he may and ash-Shāfi'ī has three views about the matter, the soundest of which is that it is forbidden, the second that it is permitted, and the third permits it for thirst but not for medicine.

Eating from someone else's property: If someone passes by someone else's garden, which does not have a wall, where there is ripe fruit, Abū Ḥanīfa, Mālik and ash-Shāfi'ī say that it is not permitted to eat without the permission of the owner, except in extreme need. If there is such need, someone may eat but is liable to pay for it. There are two positions from Aḥmad, one being that it is permitted to eat without necessity and without liability, and the other that it is permitted in necessity and there is no liability. If there is a wall, the consensus is that it is not permitted to eat from it, except with the owner's permission.

Hospitality: If a Muslim asks for hospitality from a Muslim inhabitant of a village without a market and he has no need, it is not obligatory to give him hospitality but it is recommended, according to three Imams, while Aḥmad says that it is mandatory. He considers the period of the obligation to be a night, but three nights are recommended. If he refuses, Aḥmad says that it becomes a debt for him.

Chapter Ten

Slaughtering and Hunting

All four Imams agree that slaughtering should be done by a sane Muslim, male or female, who can do it well. They agree that slaughtering done by unbelievers other than the People of the Book is unlawful. They agree that slaughtering is valid with anything that makes blood flow and can be with a knife, sword, glass, stone or anything which has a sharp edge. Slaughtering involves cutting the windpipe and gullet. The arteries are not obligatory, in the view of ash-Shāfi'ī, although severing them is recommended by him and Aḥmad. Abū Ḥanīfa says that the windpipe, gullet and one artery must be cut, while Mālik says all four must be cut.

Cutting the head off: If the head is completely cut off, the animal is not unlawful. If an animal is slaughtered from the back of the neck and has not died before the windpipe is cut, it is lawful. If the animal has died before the windpipe is cut, it is not lawful in the view of Abū Ḥanīfa and ash-Shāfi'ī. Life is noted by strong movement combined with bleeding. Mālik and Aḥmad say that it is not lawful at all.

Position of animals during slaughter: The *sunna* is to slaughter camels hobbled, while cattle and sheep should be slaughtered lying down. If a cow or sheep is killed like a camel or a camel is slaughtered like a cow, it is lawful with Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad, although it is disliked by Abū Ḥanīfa. Mālik says that if this is done without it being necessary, it should not be eaten. Some Mālikis say that it is disliked.

Slaughter of pregnant animals: If an animal is slaughtered and a dead foetus is found inside it, it can be eaten in the opinion of three but not in the opinion of Abū Ḥanīfa.

Hunting with animals: They agree that it is permitted to hunt with trained animals like dogs, leopards, falcons, and eagles, except for

black dogs according to Aḥmad. Three make it a precondition that the animals refrain from eating the game they are sent after and come when called. Mālik says that this is not a precondition. Abū Ḥanīfa and Aḥmad say that the training of an animal has to be on two occasions for the animal to be considered trained. Ash-Shāfi'ī says it is what is considered custom, and Mālik does not take that into consideration.

Saying "Bismillāh": Saying "*Bismillāh*" when releasing the animal for game is *sunna* with ash-Shāfi'ī. If someone omits it deliberately, it is not unlawful. Abū Ḥanīfa says that it is a precondition. If he forgets it, it is lawful. If deliberate, it is not. Mālik says that if it is deliberate, it is not lawful, and if forgotten, there are two positions. Aḥmad has various statements. The most evident is that if someone omits it when shooting or releasing the animal, it is not lawful to eat it.

Game injured or killed by hunting animals: If a hunting dog wounds but does not kill the prey and the hunter reaches the game while it is still alive and it dies before he can slaughter it, Abū Ḥanīfa says that it is not lawful. If the animal kills the game with its weight, ash-Shāfi'ī has two positions, one being that it is lawful, which is the sounder, and the well-known position of Mālik, and other that it is not lawful, and that is what is preferred by the Hanbalis. Abū Ḥanīfa has two positions, the more likely being that it is lawful.

Game eaten by hunting animals: If a trained dog eats some of the game, Abū Ḥanīfa says that it is not lawful and anything it has caught before that should not be eaten. Mālik says it is lawful. Ash-Shāfi'ī has two positions: one is that it is lawful and the second, which is more likely, that it is not. A hunting bird is like a dog according to three of the Imams, but Abū Ḥanīfa says that what the hunting bird eats from is not lawful.

Game found dead after some time: If someone shoots game or releases a dog on the game and it bites it and then the game disappears and it is found dead and the bite is part of the cause of death, a group of Shāfi'ites say that it may be eaten, but the sound

view of the school is that it should not be eaten, which is the position of Aḥmad. Abū Ḥanīfa says that if someone follows game immediately after shooting and finds it dead, it is lawful. If he delays following it, it is not. Mālik says that if he finds it during that day it is lawful. Later it is not.

Various ancillary matters: If traps are set up and an animal falls into one and dies, it is not lawful to eat. Abū Ḥanīfa says that if there are weapons in the trap and it is killed by the edge of one, it is lawful. If a domestic animal becomes wild and the owner cannot catch it, Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad says that it is slaughtered in the same way a wild animal is when he does catch it. If someone shoots game and it splits in two, both parts are lawful in the view of ash-Shāfi'ī and one of two views from Aḥmad. Abū Ḥanīfa says that if they are equal, they are both lawful. Mālik that if the piece with the head is smaller, the animal is not lawful. If it is bigger, it is lawful and the other is not. If someone looses a dog on game and calls it but it does not stop but continues and kills the game, ash-Shāfi'ī says that it is not lawful to eat it. Abū Ḥanīfa and Aḥmad say that it is, and there are two views from Mālik. If he shoots a bird and it falls to the earth and he finds it dead, it is lawful. If the game escapes from his hand, he still can claim it according to three Imams, but Aḥmad says that if it goes far in the wild he ceases to have any right to it.

Chapter Eleven Business Transactions

There is consensus that trade is lawful and usury unlawful. The Imams agree that trade is valid for every sane adult person who has freedom of choice and disposal. The sale of the insane is not valid. They disagree about the sale of a child. Mālik and ash-Shāfi'ī say that it is not valid. Abū Ḥanīfa and Aḥmad say that it is valid if he has discrimination. But Abū Ḥanīfa imposes a condition that there be prior permission from his guardian. Aḥmad stipulates that there be permission from the guardian. Three Imams consider a forced sale invalid, while Abū Ḥanīfa says that it is valid.

Silent transactions: A silent transaction is not a sale in the predominant opinion of ash-Shāfi'ī, and the same is reported from Abū Ḥanīfa and Aḥmad. Mālik says that it is a sale, and other Shāfi'ites accepted that, and it is found in a transmission from Abū Ḥanīfa and Aḥmad. Is offer and acceptance a precondition for small items? Abū Ḥanīfa says that it is not for either small or large items, and in another position only for large items, which Aḥmad also says. Mālik says that it is not a precondition at all, and that everything which people consider a sale is a sale. Something small is like a loaf of bread.

Option to cancel a sale: When a sale has been firmed up, each of the parties have the option to cancel, provided they have not parted or have stipulated a cancellation period. Abū Ḥanīfa and ash-Shāfi'ī say that it is permitted to set a cancellation period of three days, and no more. Mālik says that it is permitted to set it according to what is needed, which varies with different goods. Fruit which will not last more than a day cannot have a longer cancellation period. When the period of the option ends, choice ends and the sale is binding.

Invoking an option to cancel a sale: Someone who has an option may cancel the sale in the presence of the seller and also in his

absence, according to Mālik, ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that it must be in his presence. When there is an unknown option in the sale, then both the condition and sale are invalid with Abū Ḥanīfa and ash-Shāfi'ī. Mālik says such a sale is permitted and the option is by custom. Aḥmad says that it is valid.

Death during cancellation period: If buyer or seller die during the period of the option, it is transferred to his heir according to three Imams, but Abū Ḥanīfa says that it is cancelled. When there is an option with a time period, is ownership transferred to the buyer in that period? Ash-Shāfi'ī has various statements, one being that transfer of ownership occurs by the contract, as Aḥmad says. A second position is that it is when the option ceases, which is the position of Abū Ḥanīfa and Mālik, and the third, which is preferred, is that ownership is suspended until it is finalised.

What is permitted and not permitted in sales

There is consensus that selling a pure item is valid, but does selling something impure in itself, such as dogs, wine and dung, constitute a valid sale? Abū Ḥanīfa says that it is valid to sell dogs and dung and that a Muslim may delegate a *dhimmī* to buy and sell wine. The Mālikis disagree about selling dogs: some allow it, some dislike it, and some say it is permitted for certain uses. Ash-Shāfi'ī and Aḥmad say that it is not permitted to sell anything of that nature and that a dog has no value that should be compensated if is killed. Can oil which is rendered impure be purified by washing? The most likely position in the Shāfi'ī school is that it cannot be purified and so it is not permitted to sell it, which is the position of Aḥmad and Mālik. Abū Ḥanīfa says that it is permitted to sell impure oil.

Various transactions: A woman's milk is pure and can be sold according to ash-Shāfi'ī and Aḥmad, but Abū Ḥanīfa and Mālik say that it is not permitted. Ash-Shāfi'ī says that is valid to sell houses in Makka, while Abū Ḥanīfa and Mālik say that it is not valid. There are two statements from Aḥmad, the soundest of which is that it is not valid to sell or let them. Abū Ḥanīfa and Mālik say that it is dis-

liked to let them. Selling silkworms is valid according to all but Abū Ḥanīfa, who says it is not valid.

Owner's permission in trade: It is not valid to sell what one does not own without the permission of the owner, in the new school of ash-Shāfi'ī. In the old school, it is contingent on the assent of the owner. Abū Ḥanīfa says that it is valid but dependent on the permission of the owner. Buying is not dependent on permission. Mālik says that all transactions are dependent on permission. Aḥmad has two positions.

Sales without full possession: Ash-Shāfi'ī and ash-Shaybani say that it is not valid for someone to sell something whose ownership is not established for him, such as selling something before taking possession of it, whether it is movable or immovable property. Abū Ḥanīfa says that it is permitted to sell immovable property before taking possession. Mālik says that it is not permitted to sell food before taking possession of it, but that it is permitted in respect other things. Aḥmad says that if the item can be measured, counted or weighed, it is not permitted to sell it before receiving it, but that it is permitted in other things. Possession of what can be physically handed over is by transfer, and in immovable things, such as real estate and orchards, it is by vacation.

Sales of intangibles and unknown quantities: It is agreed that it is not permitted to sell what cannot be guaranteed to be handed over, such as birds in the air or fish in water. Three Imams say that is not allowed to sell an indeterminate article, like one cloth in a pile of cloth lengths. Abū Ḥanīfa allows it with a cancellation option.

Sales of unseen goods: It is not valid to sell an absent article which has not been described, according to Mālik, and that is the most likely position of ash-Shāfi'ī. Abū Ḥanīfa says that it is valid, but the buyer has the option to refuse when he sees it. Aḥmad says the sale is valid.

Beans in the pod and wheat in the husk: It is not permitted to sell broad-beans in the pod, according to all but Abū Ḥanīfa who says it

is permitted. It is not valid to sell wheat in the husk in the soundest view of ash-Shāfi'ī, while Mālik, Abū Ḥanīfa and Aḥmad allow it.

Representative sales: If someone says, "I will sell you this heap, a dirham for every *cafiz*," that is valid with Mālik, ash-Shāfi'ī, Aḥmad, Abū Yūsuf and ash-Shaybānī. Abū Ḥanīfa says it is only valid for one *cafiz* of it. If he specifies a number of *cafizes*, it is valid. If someone says, "I will sell you this land, every cubit for a dirham," or "this flock, every sheep for a dirham," it is valid. Abū Ḥanīfa says it is not valid.

Unquantified sales: Three Imams say that it is valid to sell bees, even in their hives if they have been inspected, but Abū Ḥanīfa says it is not permitted. Three Imams say that it is not permitted to sell milk in the udder, but Mālik says it is permitted for a known number of days if the amount of the milk is known. It is not permitted to sell wool on the back of sheep, according to ash-Shāfi'ī, Abū Ḥanīfa and Aḥmad, but Mālik says it is permitted, provided it is shorn immediately.

Buying and selling Qur'ans: They agree that it is permitted to buy Qur'ans,¹ but disagree about selling them. Three of the Imams permit it without dislike, but Aḥmad dislikes it. It is not permitted to sell a Qur'an to an unbeliever, according to ash-Shāfi'ī and is one of two positions from Mālik. Abū Ḥanīfa says it is valid. Aḥmad says it is not valid.

Selling grapes to winemakers: It is agreed that it is disliked to sell grapes to a winemaker. Aḥmad says it is not valid.

Stud fees: Stud fees are unlawful and the price received for them is forbidden with three while Mālik permits a recompense for the covering of the stud animal for a specified period of time.

What invalidates a sale and what does not

Invalid conditions: If someone makes a sale with a condition which is incompatible with the aim of the sale – such as selling a slave on

1. This means a *muṣḥaf*, an Arabic copy.

the condition that he cannot be sold or freed, a house provided that the buyer lives in it, or a cloth provided that it is made up into a garment – the sale is void with Abū Ḥanīfa and ash-Shāfi'ī. Mālik says that if the condition involves a use that is insignificant, such as living in a house, it is permitted. Aḥmad says that if it stipulates living in the house for a day or two, it is not invalid.

Status of goods bought in invalid sales: If a buyer takes goods in an invalid sale, it is agreed by three of the Imams that he does not own them, whereas Abū Ḥanīfa says that if he has taken them with the permission of the seller after exchanging something of value for them, he owns them if the price has been paid. If someone plants in land purchased in an invalid sale or builds on it, when the seller takes the land back, he cannot uproot the plants or destroy the building without being liable for the loss. Three Imams state that can pay the price of the improvements and then owns it, but Abū Ḥanīfa says that he cannot take the land back but is paid the value of the land.

Usurious transactions

There is consensus that there are six items subject to unlawful usurious transactions: gold and silver, wheat, barley, dates and salt.

Forbidden and permitted transactions: The Muslims agree that it is not permitted to sell gold for gold alone or silver for silver, whether minted, ore or jewellery, except in equal weight from hand to hand. None of it which is absent may be sold for something present. They agree that it is permitted to sell gold for silver and silver for gold in disparate amounts. They agree that it is not permitted to sell wheat for wheat, barley for barley, dates for dates, or salt for salt when there is an accepted measurement, except like for like, hand to hand. It is permitted to sell dates for salt and salt for dates in disparate amounts hand to hand. It is not permitted for buyer and seller to part before taking possession, except in the view of Abū Ḥanīfa. Three Imams do not permit to the sale of jewellery for the same minted metal in disparate amounts, but Mālik says it is permitted to sell for its value in coin. There can be no disparity before

taking possession in selling food for food, according to ash-Shāfi'ī and Mālik, although Abū Ḥanīfa says it permitted.

Usury in respect of other things: Certain aspects of what could be considered usury are not forbidden when dealing with things other than gold and silver, food and drink, namely delay in payment or delivery, disparity and separating before taking possession. Abū Ḥanīfa says that delay is unlawful only where the same category is concerned. Mālik says that it is not permitted to sell one animal for two of the same species. Every two things which have the same name and character are the same category. If they differ, they are two different categories. Mālik says wheat and barley are the same category. There are two positions by ash-Shāfi'ī about milk and meat, the soundest being that they are different categories, and that is the school of Abū Ḥanīfa. There is no usury in respect of iron, lead and the like with Mālik and ash-Shāfi'ī because gold and silver constitute the medium of exchange. Abū Ḥanīfa and Aḥmad, in one position, say that usury extends to iron, copper and the like.

Sale by estimation: Things in respect of which usury is forbidden cannot be sold some for others by estimation, except dates on the tree for dates on the ground. Mālik says that in the desert it is permitted to sell a measure by estimation rather than by exact weight.

Disparity in value of items subject to usury: According to Mālik and ash-Shāfi'ī, things in respect of which usury is forbidden cannot be sold against one another when one of the two has something else with it which creates a disparity in value. So two varieties of the same category may not sold when their value differs, like a mudd of good dates and some dirhams for another *mudd* of good dates, or like one sound dinar and an unsound one for two sound ones. Abū Ḥanīfa allows all of that.

Dry produce for fresh produce: It is not permitted to sell dry produce for fresh on the ground, like selling fresh dates for dry ones. Abū Ḥanīfa alone permits it by measure. As for *'ariyyas*, which is that a man sell the dates on the trees by estimation for what is on the ground, ash-Shāfi'ī allows it in respect of amounts of less than five *wasqs*, and says it is not confined to the poor, which is the position

of Aḥmad. But he stated in one of two positions that the fresh dates may be estimated and sold for their equivalent in dry dates. Abū Ḥanīfa says that this not permitted at all. Mālik says it is permitted in one specific situation, which is when a man is given the fruits of some trees in a garden which it is hard for him to get to and so he sells it by estimation for dry dates which he receives. *'Ariyyas* can be sold in separate contracts if they are more than five *wasqs*. Aḥmad says that more than one is not permitted.

Grain, flour and bread: It is not permitted to sell grain for flour milled from that grain, according to Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad in one of two transmissions, but Mālik says it is permitted to sell it by measure. Aḥmad says in another transmission that it is permitted to sell it by weight. It is not permitted to sell wheat flour for other wheat flour in the view of ash-Shāfi'ī and Mālik, but Aḥmad says that it is permitted, as does Abū Ḥanīfa, if it is of the same quality. It is not permitted to sell flour for bread made from the same flour. The Hanafis permit selling wheat for bread without equivalence. It is not permitted to sell bread for bread when one or both are fresh. It is not permitted to sell an animal for meat from the same animal, with three Imams, while Abū Ḥanīfa permits it.

Selling property, trees and fruits

Included in the sale of a house is the land accompanying it and every building on it, including the bath-house, but that does not include things which can be carried like a bucket, winch, or bed. It includes doors, shelves, and stairs. Zafar says that if there are tools and furniture in the house, they are included.

Pollinated palms: If someone sells a date palm which has unpollinated spadices on it, they are included in the sale. If they have been pollinated, three Imams say they are not included, except for Abū Ḥanīfa.

Ripe and unripe fruit on the tree: It is not permitted to sell fruit before it is ripe without stipulating immediate picking, in the view of Mālik, ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says it is valid, and he

considers that it necessitates that the fruit be cut. It is always permissible to sell the fruit after it is ripe, according to ash-Shāfi'ī, Mālik and Aḥmad. Abū Ḥanīfa says that it is not permitted to sell fruit after it is ripe with the stipulation that the fruit remain.

Partial sales: If someone sells a load of produce and excepts from it some *mudds* or *ṣā's*, it is not valid, nor can he except one of the branches of a tree in the view of Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad, although Mālik says it is permitted to do so. If someone says, "I sell you the fruit of this garden less a quarter of it," it is agreed to be valid. It is not permitted to sell a sheep and exclude some of it, the skin or anything else, from the sale. Aḥmad says that the head and trotters can be excluded, and Mālik allows that on a journey but not while resident.

Selling animals left unmilked and returning goods because of a defect

Such things involve deceiving the buyer by making him think that the animal has more milk than it actually has and they are unlawful. Is the option to cancel the purchase confirmed? All but Abū Ḥanīfa say yes. When it is affirmed that the buyer has the option to return it, the return does not require the consent and presence of the seller. Abū Ḥanīfa says if it happens before taking possession, it requires his presence, and afterwards requires his consent or a judgement. The return of goods because of a defect must be immediate with Mālik and ash-Shāfi'ī, but not the other two.

Compensation agreements: If a seller says to a buyer, "Keep the object and take compensation for the defect," the buyer is not compelled to accept. If the buyer says it, the seller is not compelled to accept. If they agree, the sale is valid with Abū Ḥanīfa, Mālik and some Shāfi'īs. Aḥmad says that the buyer can keep the goods and ask the seller for compensation, in which case the seller is compelled to pay it to him.

Discovery of a defect after completion of sale: If a defect is discovered in the goods after the price has been paid, the buyer does not have the option to cancel the sale with Abū Ḥanīfa and ash-Shāfi'ī.

Increase in sold goods after a cancelled sale: In the event of a cancelled sale, if the goods increase in a clear way, like by producing offspring or fruit, the buyer keeps the increase and returns the original item, according to ash-Shāfi'ī and Aḥmad. Mālik says that if the increase is in the form of offspring, it should be returned with the original animal. If it is fruit, the buyer may keep it and return the original. Abū Ḥanīfa says that increase in the possession of the buyer always prevents its return on account of a defect.

Decrease in value of defective bought goods: If a buyer finds a defect in the goods whose value has been lessened while in his possession by a cause other than the original defect, such as sexual intercourse with a virgin or the cutting of a piece of cloth, there is no barrier to his returning them, but they should be returned with compensation. The new defect does not prevent the goods being returned. If the new defect was the only way of discovering the original defect, for instance opening up a melon or cracking open an egg, Abū Ḥanīfa says the return is prevented. Ash-Shāfi'ī's position is that it may be returned. Mālik and Aḥmad, in one position, say that it may not be returned and no compensation is owed.

Murābaha (selling with a fixed profit)

If someone buys goods, ash-Shāfi'ī says he can sell them for the original price, or more or less than it, before or after paying the original purchase price. Abū Ḥanīfa, Mālik and Aḥmad say that it is not permitted to buy something from a seller for less than the price he paid before he has paid for it. It is, however, agreed that it is permitted to sell with *murābaha* (a specified profit), that is when a seller makes clear the original price he paid for some goods he is selling and specifies an increment, saying, for example, "I will sell it to you for its original price plus one dirham in every ten."

Forbidden sales

Bidding up: Bidding up merchandise is unlawful. Bidding up something is to make a higher bid for something, not out of the desire to buy it, but simply to trick another person into paying more. If someone falls for that and buys, then the sale is valid, with three, but Mālik says that it is invalid. It is unlawful for a city-dweller to buy from a bedouin when he arrives as a stranger with goods for which there is general need.

Unrefundable deposits: A sale with an unrefundable deposit is unlawful in the view of three: that is for someone to give a dirham towards the price of some goods which then becomes part of the price if he likes the goods but is otherwise forfeited. Aḥmad says that there is no harm in it.

ʿĪna sales: Ash-Shāfiʿī permits but dislikes the *ʿīna* sale, which is when someone sells goods to a buyer for a certain price on credit and then buys them back from him for cash at a lower price. Abū Ḥanīfa, Mālik and Aḥmad say that doing this is not permitted if there is any disparity in the price. If a buyer sells the goods to someone other than the seller and then the seller buys them after that, it is permitted.

Price fixing: Abū Ḥanīfa and ash-Shāfiʿī say that it is forbidden to fix prices. Mālik says that this happens when one of the people of the market increases or lowers the price and he is told, "Either you sell by the price of the people of the market or you leave." If a ruler sets prices and a man sells his goods when he does not want to sell them for that price, it is by compulsion. Abū Ḥanīfa says that the compulsion of a ruler prevents the validity of a sale.

Hoarding: Hoarding foodstuffs is agreed to be unlawful. Hoarding means to buy food when the price is high and to withhold it in order to increase the price even further.

Selling debts for debts: They agree that it is not permitted to sell a debt for a debt.

Selling dogs: The price of a dog is considered offensive and Mālik dislikes but allows it. Abū Ḥanīfa says it is allowed for beneficial use. Ash-Shāfiʿī says that it is not allowed at all and it has no value, which is what Aḥmad also says.

Disputes in a sale and destruction of goods

If there is a dispute about a price and there is no proof one way or the other, the parties should swear oaths. The soundest position of ash-Shāfiʿī is that the seller swears first, but Abū Ḥanīfa says that the buyer should start. If the goods are destroyed and the parties disagree about the price, ash-Shāfiʿī says that they should swear and the sale is voided and the price returned if it can be assessed. If the goods are replaceable, then the buyer must bring a replacement. This is one of two views of Aḥmad and one of Mālik's. Abū Ḥanīfa says that there are no oaths when goods are destroyed and that the word taken is that of the buyer. That is also related from Aḥmad and Mālik. Ash-Shāfiʿī says that it is the word of the seller which should be taken. Abū Ḥanīfa says that if the goods are in the possession of the seller's heir, both parties should swear oaths, and if they are in the possession of the heir of the buyer, his word is taken when accompanied by an oath.

Financial disagreements: If the parties disagree about a precondition involving the length of a credit term or the length of an option to cancel a sale, the stipulation of a pledge or financial liability, or a promise, they swear oaths, according to ash-Shāfiʿī and Mālik. Abū Ḥanīfa and Aḥmad say that they do not swear oaths about any precondition and a denial from either party should be accepted.

Disagreements in credit sales: If someone sells an item for a price on credit and the buyer and seller then disagree about the transaction, and the seller says he will not hand over the goods until they are paid for and the buyer says he will not pay until he receives the goods, there are several views from ash-Shāfiʿī, the soundest of which is that the seller is compelled to hand over the goods, and then the buyer is compelled to pay the price. There are other positions. Abū Ḥanīfa and Mālik say that the buyer is compelled first.

Destruction of bought goods before possession: If bought goods are destroyed before possession by a natural disaster, then Abū Ḥanīfa and ash-Shāfi'ī say that the contract is nullified. Mālik and Aḥmad say that if the goods are not things which can be measured, weighed or counted, the buyer is liable. If a third party destroys them, ash-Shāfi'ī has several views, the soundest of which is that the sale is void. The buyer can choose between having the goods replaced and paying, or voiding the deal, or making the third party pay. This is the position of Abū Ḥanīfa and Aḥmad, and the preferred view of Mālik. If the seller destroys them, it is considered the same as a natural disaster, according to all except Aḥmad who says that the seller owes their price or must replace them. If the goods in question consist of fruit on trees which have been destroyed after the land has been vacated, Abū Ḥanīfa says that it is the liability of the buyer, which is the soundest position of ash-Shāfi'ī. Mālik says that if less than a third is destroyed, it is the liability of the buyer. If it is more, it is that of the seller. Aḥmad says that if it is destroyed by natural causes, it is the liability of the buyer; if it is stolen, it is that of the seller.

Buying in Advance (*Salam*) and Loans (*Qirāḍ*)

The imams agree that buying in advance is permitted and its validity depends on six conditions: that the category of goods is known, their quality is known, their amount is known, the term of payment is known, and the amount of money is known. Abū Ḥanīfa says that the naming of the place of delivery if it is something heavy is a seventh condition. The others consider this binding but not a condition.

Goods for which advance payment is permitted: They agree that it is permitted for things which can be weighed and measured and described. It is permitted for numbered things which are not dissimilar, like nuts or eggs, except in one position from Aḥmad. They disagree about counted things which can differ greatly from one another, like pomegranates or watermelons. Abū Ḥanīfa says that advance payment is not permitted for such things, since neither

measure nor quantity are an adequate gauge, but Aḥmad says that it is absolutely permitted. Ash-Shāfi'ī says that it is permitted by weight. Two things are reported from Aḥmad: the most famous that it is permitted by quantity. Aḥmad says that anything generally reckoned by weight cannot be done by measure or vice versa.

Various factors: An advance sale is permitted in respect of countable things by Mālik, ash-Shāfi'ī and Aḥmad, when it is probable that they exist in the place concerned. Abū Ḥanīfa says that it is not allowed unless they actually exist when the contract for delivery is made. It is not permitted in respect of rare precious stones, except by Mālik. Partnership and resale with discount are allowed in respect of advance sales in the same way as in other sales, according to Mālik, but Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad forbid them.

Informal loans: Loaning (*qarḍ*) things is recommended and it takes effect immediately when someone requests it for however long he wishes. A date set for it is not binding, although Mālik says that it is binding. Three of the Imams say it is permitted to lend bread, but Abū Ḥanīfa says it is not permitted. Is it permitted by weight or number? There are two views from ash-Shāfi'ī and Aḥmad.

Added elements: When a man makes a loan to another, is it permitted for the lender to benefit from any of the property of the recipient in the form of a gift or food to which he invites him, or is that not permitted - unless it is custom - during the period of the loan? Abū Ḥanīfa, Mālik and Aḥmad say that it is not permitted. Ash-Shāfi'ī says that if it is not a precondition, it is permitted.

Abiding by original agreement: They agree that if someone owes a man a debt with a set term, the debtor is not allowed to pay some of it before the term and delay some of it to a later term. It is also not permitted for the creditor to take some of it before the term in money and some in goods. There is no harm when the term comes if the creditor takes some and cancels some of the debt or delays it to another time. If a man owes a debt to another through a sale or a loan, and he gives a term, Mālik says that the creditor cannot retract it and he is obliged to wait until the expiry of that term. He can

increase the term, except in respect of fines for physical injury and loans according to Abū Ḥanīfa.

Collateral (*Rahn*)

Collateral is permitted at home and on a journey by all. The contract of the collateral must be accepted, even if it is not taken, and it is permitted to compel the pledger to surrender his collateral. Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad say that one of the preconditions for the validity of collateral is taking possession of it and so it must be taken. Collateral made with something which is jointly owned is permitted, whether it is something divisible, like immovable property, or indivisible, like a slave. Abū Ḥanīfa says that it is not valid. Ash-Shāfi'ī says that it is not a precondition that the pledge should remain with the pledgee, but it is a precondition with Abū Ḥanīfa and Mālik. If the collateral leaves the possession of the pledgee in any way, the pledge becomes invalid, except in the view of Abū Ḥanīfa who says it is not invalidated if it becomes a deposit with the pledger.

Extending collateral: If someone pledges something for one hundred and then borrows another hundred and wants to use the original pledge as collateral for both debts, that is not allowed in the predominant position of ash-Shāfi'ī since the collateral is tied to the first debt. That is also the position of Abū Ḥanīfa and Aḥmad. Mālik says it is permitted.

Selling collateral in the case of non-payment: If the pledger stipulates that the collateral can be sold if the debt is due and not paid, that is allowed by Abū Ḥanīfa, Mālik and Aḥmad. Ash-Shāfi'ī says that the pledgee is not permitted to sell the collateral himself. The pledger or his agent can sell it with the permission of the pledgee. If he refuses, the judge may oblige him to pay the debt or sell the collateral. Mālik recommends that the collateral should be presented to a judge. If the pledgee does not do that and sells it, that is allowed. When the pledger appoints someone to sell the collateral when the debt is due and places it in his possession, ash-Shāfi'ī and

Aḥmad say that such delegation is valid. The pledger can annul that arrangement and dismiss him like other agents. Abū Ḥanīfa and Mālik says that he cannot. If both parties agree to deposit the collateral with a reputable person and the pledger stipulates that the person should sell it when payment is due, and he sells it and then the money is lost before the pledgee takes it, Abū Ḥanīfa says that it is the liability of the pledgee as if it was in his possession. Mālik says that if the pledge is lost in the possession of the caretaker, it is the liability of the pledger as opposed to the pledgee. Ash-Shāfi'ī and Aḥmad say it is always the liability of the pledger unless the pledgee transgresses and then it is like a trust.

Increase in the value of collateral: In the case of increase in the collateral which is separate from it, like offspring, fruit, wool and other things, Mālik says they belong to the pledger. Abū Ḥanīfa says that the increase is part of the collateral. Ash-Shāfi'ī says that all of it is separate from the collateral. Aḥmad says that it belongs to the pledgee rather than the pledger.

Destruction of collateral: If a pledgee claims that the collateral has been destroyed and the parties agree on its value, there is no discussion. If they agree on its description but not its value, Mālik says that experts are asked about the price and action proceeds accordingly. Abū Ḥanīfa says that one accepts the word of the pledgee about the value when accompanied by an oath.

Bankruptcy and Limitation

Legal restraint: Mālik, ash-Shāfi'ī and Aḥmad say that a bankrupt, and a debtor when his debts overwhelm him, should be placed under legal restraint when his creditors request it, so that a judge can forbid him to dispose of his property to prevent his creditors being harmed. A judge can sell the property of a bankrupt if he refuses to sell it or divide it up between his creditors. Abū Ḥanīfa says that a bankrupt should not be placed under legal restraint but rather imprisoned until he pays his debts. If he has property, the judge cannot dispose of it or sell it unless his property is in dirhams and his

debt is in dirhams in which case the *qāḍī* can take it. If his debt is in dirhams and his property in dinars, it should be sold to pay the debt.

Limits of legal restraint: They disagree about a bankrupt disposing of his property after being placed under legal restraint. Abū Ḥanīfa says that there can be no legal restraint in any case. Even if a *qāḍī* decides on it, it should not be imposed. If restraint is imposed, transactions which cannot be nullified, like marriage, divorce and emancipation are carried out. Things which can be nullified, like sales, hiring, gifts and *ṣadaqa*, are invalid. Mālik says that transactions in respect of items of property through sales, gifts or emancipation, may not be carried out. Ash-Shāfi'ī has two positions: one is like Mālik's and the second is that the transaction is valid but conditional. If his debts are paid, then the transactions are allowed. If they are not, then they are invalid, starting with the gift and then the sale. Aḥmad says that none of his transactions are allowed except for emancipation.

Unpaid for goods: If a living bankrupt is in possession of some unpaid for goods and their owner takes them back, not having received any of their price, Mālik, ash-Shāfi'ī and Aḥmad say that the owner is more entitled to them than any other creditors and so he should take the goods rather than them. Abū Ḥanīfa says that their owner is like any other creditor and that all the creditors should divide them between them. If the owner finds them after the bankrupt person has died and he has not received any money for them, ash-Shāfi'ī alone says that he is more entitled to them, as he would be if he was still alive. The other three say that he is like any other creditor.

Further debts: If a bankrupt incurs a further debt after legal restraint has been imposed, the debt is his responsibility, but the new creditor does not share with the other creditors on whose behalf the legal restraint was imposed, in the view of all but ash-Shāfi'ī, who says he does.

Seizure and sale of the home of a bankrupt: Can a bankrupt person with no wealth have his home and servants he needs forcibly sold to pay his debts? Abū Ḥanīfa and Aḥmad say that they should

not be sold and Abū Ḥanīfa says that no property should be sold. Mālik and ash-Shāfi'ī say that all such things should be sold.

Cases of proven hardship: When someone's hardship is proven in the presence of a judge, can the judge come between him and his creditors? Abū Ḥanīfa says that the judge can release him from prison but not come between him and his creditors. They attend to him and may not stop him from transacting but may take the surplus of his earning by shares. Mālik, ash-Shāfi'ī and Aḥmad say that the judge can release him from prison without the permission of his creditors and also intervene between him and them. He is not re-imprisoned, but the judge should oversee his conduct. They agree that evidence of hardship can be heard after imprisonment. They disagree about whether it can be heard before it. Mālik, ash-Shāfi'ī and Aḥmad say that it can be heard before. Abū Ḥanīfa's position is that it can only be heard after it.

Legal restraint for other than bankruptcy: They agree that other reasons for someone being under legal restraint are youth, slavery and insanity. When a boy comes of age, but is not sane, his property should not be handed over to him. They disagree about when puberty occurs. Abū Ḥanīfa says that for a boy it is a wet dream or ejaculation. If he does not experience that, it is when he reaches the age of seventeen or eighteen. A girl comes of age by menstruation, wet dreams, pregnancy or when she is seventeen. Mālik has no limit but his people say seventeen or eighteen. Ash-Shāfi'ī and Aḥmad say it is fifteen, or ejaculation of sperm, or menstruation, or pregnancy, or pubic hair.

Conditions for handing over property to its owner: When good sense is discerned in the owner of property, he is given it. They disagree about what good sense consists in. Abū Ḥanīfa, Mālik and Aḥmad say that in a boy it is the ability to care for and oversee the growth of his property and lack of squandering. Integrity or iniquity are not considered. Ash-Shāfi'ī says that it applies to both property and the *dīn*. Abū Ḥanīfa and ash-Shāfi'ī say that there is no difference between boys and girls. Mālik says that legal restraint is not lifted from a girl, even if she is adult and sensible, until she marries

and the marriage has been consummated. Aḥmad has two positions, one is that there is no difference and the other is like that of Mālik. They agree that when a boy comes of age and is sensible, he should be given his property. If he comes of age and is not sensible, he should not be given it. If he becomes foolish after being sensible, all but Abū Ḥanīfa say that he should be placed under legal restraint as regards his property.

Reaching a settlement (*Ṣulḥ*)

Partial settlement: They agree that if someone is known to owe something and will only reach a settlement for some of his debt, that is not allowed because it is undermining the right of the debtor. If the obligation of debt is not known and a claim is made against him, is the settlement valid? Three of the Imams say it is valid, while ash-Shāfi'ī says that it is not.

Disputed vertical divisions: If there is a wall between two houses, and the owner of one of the houses has plants growing on it and each claim that all the wall is his, Abū Ḥanīfa and Mālik say that it belongs to the one with the plants, if he accompanies his claim by an oath. Ash-Shāfi'ī and Aḥmad says that if one has plants on it, that does not give him any preference. The plants belong to their owner and the wall is shared between them if they accompany their claim by oaths.

Disputed horizontal divisions: If two claim a ceiling shared between a house and a room above it, according to Abū Ḥanīfa and Mālik, it belongs to one below. Ash-Shāfi'ī and Aḥmad say it is in halves. If the top and bottom are destroyed and the one on top wants to build, he cannot compel the owner of the bottom half to build and make a ceiling so that the one on the top can build his floor. If the one on top chooses to rebuild his ceiling with his own money, the one on the bottom cannot use it until he has reimbursed the other. This is the school of Abū Ḥanīfa, Mālik and Aḥmad. It is also reported from ash-Shāfi'ī, although he also says that the one on the

bottom cannot be compelled to pay or be denied use of it if the owner of the top storey built without his permission.

Property development: An owner can develop his property in any way which does not harm his neighbour. They disagree about harmful alteration. Abū Ḥanīfa and ash-Shāfi'ī permit it, and Mālik and Aḥmad forbid it. Examples of that might be building a bath-house, press or lavatory, or digging a well near to someone else's well which lowers its water level, or making a window which overlooks a neighbour. He cannot be prevented from disposing of his property. They agree that a Muslim can build onto a building he owns but is not allowed to look at the private areas of his neighbours. So if his roof is higher than others, Mālik and Aḥmad say that he must build a screen to prevent it from looking over his neighbours. Abū Ḥanīfa and ash-Shāfi'ī say that this is not necessary. They disagree about two men who share a wall which falls and one asks the other to rebuild it and he refuses. Also when they have a waterwheel, canal, river or well which is disused. Abū Ḥanīfa say that there can be compulsion in respect of a river, waterwheel, canal or well, but not in respect of a wall. If one of them builds the wall he can prevent the other using it until he pays his share. Mālik agrees about all these things except the wall and has two reports: one compelling him and one not.

Debt Transfer (*Hawala*)

They agree that when someone owes something to another man, he is permitted to transfer his debt to someone who owes him a debt but the original creditor is not obliged to accept that. The assignee cannot refuse it. Abū Ḥanīfa and ash-Shāfi'ī do not consider the preferences of the assignee but Mālik says that if the assignee is an enemy of the original creditor, he does not have to accept the debt. If the creditor accepts the transfer, the assignor is free of the debt. They disagree about a creditor coming back at the assignor if he does not get his right from the assignee. The school of Mālik is that if the assignor deluded him by knowing that the new debtor was bankrupt, the assignee can come back to the assignor, but that is the

only grounds on which he can do so. The other three say that he has no come-back at all, even in the case of misrepresentation.

Guarantee (*Damān*)

They agree that a guarantee is permitted, but responsibility to pay is not transferred from a living debtor. The debt remains the responsibility of the debtor and it only ceases to be his responsibility when it is paid.

Guarantees for unknown amounts: Abū Ḥanīfa, Mālik and Aḥmad allow someone to be a guarantor for something unknown, as, for instance, when he says, "I guarantee you what Zayd owes" when he does not know the amount. He can also be a guarantor for a debt which has not yet been incurred like "Whatever debt Zayd incurs with you is my responsibility." The well-known position of the Shāfi'ī school is that this is not permitted and there is no way to discharge an unknown obligation.

Standing bail: It is agreed that it is valid to stand bail for someone in the case of people who are obliged to attend a judge's court. It is valid to stand bail for someone when there is a claim against him, except in the view of Abū Ḥanīfa. If the bailor dies, the bail is void, except in the view of Mālik. If the one for whom he is responsible disappears or flees, Abū Ḥanīfa and ash-Shāfi'ī say that there is nothing against him other than producing the bailee to attend. He owes no money. If he is unable to produce him since he is absent, Abū Ḥanīfa allows him enough time to travel and return with the person. If he does not, he is imprisoned until the bailee is brought. Mālik and Aḥmad say that if he does not produce the bailee, he owes money.

Partnership

It is agreed that co-operative partnership is permitted, and the *mufawāda* partnership is permitted, according to Abū Ḥanīfa and Mālik, although Abū Ḥanīfa differs from Mālik about its form. Abū

Ḥanīfa says that the *mufawāda* requires two men to have equal shares in what they own in gold and silver. If one has more than the other, it is not valid. Any profit is divided equally between them, and each is responsible and liable for what his partner does. Mālik says that it is permitted for one to have more money than the other and then the profit is divided according to the amount they have, and any liability incurred by one of them in trade is shared between them in the same way. That does not apply to unlawfully acquired property. According to Mālik, it makes no difference whether their capital is in goods or dirhams or whether the two are partners in all or some of the property they devote for trade. It is the same whether their property is mixed so it cannot be separated, or it can be separated after having been joined. They are like a single hand in respect of the partnership. Abū Ḥanīfa says that the partnership is valid, even if each retains possession of his property and it is not joined. The position of ash-Shāfi'ī and Aḥmad is that this kind of partnership is invalid.

Labour partnerships: Mālik and Aḥmad permit in partnership in respect of labour when people do the same sort of work and work in the same place. Abū Ḥanīfa says that it is permitted, even if their work and location differ. Aḥmad allows all of it, but ash-Shāfi'ī says that it is invalid.

Credit partnerships: Abū Ḥanīfa and Aḥmad permit credit partnerships. Their form is that none of those involved have capital but form a partnership based on each buying on credit and sharing the profit with the others. The position of Mālik and ash-Shāfi'ī is that such a partnership is invalid.

Inequality of profit sharing: If the amounts of capital are equal and one partner stipulates that he will have more of the profit than the other, the partnership is invalid, according to Mālik and ash-Shāfi'ī, but Abū Ḥanīfa says that it is valid, even if that involves increased work by one partner.

Agency (*Wakala*)

Agency in respect of contracts is permitted by consensus in respect of all rights which can be deputised, like buying and selling, hire, paying debts, making claims, marriage, the prayer and other things. The Imams agree that the appointment of the agent by the principal is not accepted if it takes place outside an official legal environment. They agree that if the delegation is in respect of *hudūd* punishments or retaliation, it is not accepted at all.

Use of an agent by someone present: The use of an agent by someone who is present is valid with Mālik, ash-Shāfi'ī, and Aḥmad, even if the other party is not happy about that, unless the agent in question is an enemy of the other party. Abū Ḥanīfa says that the use of an agent by someone present is not valid without the consent of the other party unless the principal is ill or has travelled for three days.

Legal conditions for the delegation of an agent: If someone delegates an agent to oversee his rights, and that appointment is made in the presence of the judge, it is permitted and there is no need for further evidence, whether he is appointed to represent one man or a group. The presence of the one from whom the right is demanded is not a precondition for the validity of the appointment. If an agent was appointed outside the assembly of judgement, the judge should confirm his appointment with evidence. This is the school of Mālik, ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that the presence of the other party is a precondition for the validity of his appointment or, if the other party is a group, the presence of one of them.

Retirement and dismissal of agents: An agent can resign from his post when he so wishes, in the presence of the principal or without his presence, according to Mālik, ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that his doing so must be in the presence of the principal. The principal can dismiss the agent, even if he is not aware of it, according to Mālik and ash-Shāfi'ī. Abū Ḥanīfa says that that can only take place with his knowledge. Aḥmad has two views.

Agents with regard to buying and selling: If an agent is delegated to sell on behalf of someone, the school of Mālik, ash-Shāfi'ī, Aḥmad and some Hanafis is that he should carry out the sale for the current price of those goods in the currency of the land in which he is trading. If he wishes to sell something for less than the current price, on credit, or in other than the currency of that place, he may only do so with the consent of the principal. But Abū Ḥanīfa says that he is permitted to sell however he wishes: in whatever currency, on credit or for less than the current price. In respect of buying, they agree that he cannot buy for more than the current price nor may he buy on credit.

Various points regarding agents: The word of an agent about loss of property is accepted with evidence. The position of ash-Shāfi'ī is that his word about having returned goods to his principal is accepted, and Aḥmad says that as well. They disagree about an agent buying from himself. Abū Ḥanīfa and ash-Shāfi'ī say that it is not permitted. Mālik says that he can buy it for a higher price. Two views are reported from Aḥmad, the more likely being that it is not permitted. They disagree about an adolescent being an agent. Abū Ḥanīfa and Aḥmad say it is valid. There is no text from Mālik on that matter and ash-Shāfi'ī says that it is not valid.

Acknowledgement of debt

The imams agree that when a free adult man acknowledges a right owed to other than an heir, his admission is binding and he cannot retract it. It is the same in respect of acknowledgement of a debt when healthy or ill. Those whose rights have been acknowledged should all receive their rights if the inheritance will cover them by consensus. If it is not adequate, Mālik, ash-Shāfi'ī and Aḥmad say that they receive shares proportionally according to what they are owed. Abū Ḥanīfa says that those who were creditors while someone was healthy should be paid before those who became creditors when he was ill. If something is left, then it is given to pay debt incurred during illness. If there is nothing over, such creditors get nothing.

Deposits on Trust

It is agreed that accepting deposits on trust is a recommended act of devotion, and that there is a reward for looking after them. It is a trust and there is no liability for a trust, except in cases of negligence. The word of the caretaker about loss or return is accepted when accompanied by his oath. They disagree about someone who accepts a trust with evidence: three Imams say that his word about its return is accepted without evidence. Mālik says that it is only accepted with proof.

Liability for the loss of a trust: If someone is entrusted with some dinars or dirhams and then spends them or destroys them and then returns their equivalent to the deposit, and then what he returns is destroyed without any action on his part, Mālik says that he is not liable. He says that if he mixes the dirhams or dinars or wheat of the trust with what is like it so that they cannot be separated, then he is liable for the loss. Abū Ḥanīfa says that if he returns the original item itself, he is not liable, but that if he returns its equivalent, he is liable. Ash-Shāfi'ī and Aḥmad say he is liable in any case for removing it in a negligent manner and he remains liable whether he returns it or its equivalent.

Misuse of a trust: If someone is entrusted with something other than money, such as cloth or animals, and he infringes the trust by using it and then returning it to safekeeping again, Mālik says that if he rides an animal and then returns it, its owner can choose between making him liable for its price or taking its hire if it dies after being returned to safekeeping. If a garment is used and not worn out and then returned to safekeeping and then has been damaged, he says that if the thing is something which cannot be weighed or measured, like a waterwheel or garment, and he has used it and then it is damaged, he must pay its price, not replace it. If he transgresses by using it outside the conditions of the trust and then returns it to safekeeping, he is still liable, as ash-Shāfi'ī and Aḥmad state. Abū Ḥanīfa says that if he has transgressed the conditions of the trust and then returned it and then it is lost, he is not liable.

Returning a trust: They agree that when the owner asks for what he deposited, the keeper must return it if possible. Otherwise he is liable for it. When it is asked for, and the keeper says nothing was deposited with him or that it has been lost, his word is accepted.

Unlawfully Acquired Property (*Ghasb*)

There is consensus that unlawful misappropriation is forbidden and anyone who does that sins. It must be returned if it still exists and there is no fear that its removal will cause death. The Imams agree that if goods, animals and anything which cannot be measured or weighed has been misappropriated and then destroyed, the person who took them is liable for their value. If it is something which can be weighed or measured, he must replace them if something similar can be found, except in one view from Aḥmad.

Wilful damage: If someone damages a man's goods and deliberately destroys them, then the well-known position of Mālik is that the transgressor must pay their price and take whatever he has damaged. There is no difference in that respect between a mount and other things. Abū Ḥanīfa says that if someone damages a garment to the extent that he destroys most of its usefulness, he is obliged to pay its price and the garment is surrendered to him. If it loses half of its value or less, then he pays an indemnity for the loss. If he takes the meat of an animal or rides an animal wrongfully and it loses one of its eyes, he is liable for a quarter of its value, and all its value for both eyes, in which case the animal is given to the perpetrator. If someone damages something which he has unlawfully appropriated after its misappropriation, Mālik says that its owner must either take it with the decrease in value caused by the usurper or give it to the usurper who must pay its value on the day he misappropriated it. Ash-Shāfi'ī says that the owner can take an indemnity for the loss, as Aḥmad also says.

Profit on misappropriated property: They disagree about what is done when the usurped property is put to profitable use. Abū Ḥanīfa says that any profit is not a debt. Mālik has various statements, one

of which is that the misappropriator is liable for the profit and the second that he is not. A third is that if it is a house in which the misappropriator himself lives, he is not liable. If he hires it out to someone else, he is liable.

Various details regarding misappropriated property: If someone misappropriates a house, a slave or a garment, and it remains in his possession for some time, but he does not use it to live in or rent out, or he does not employ the slave or wear the garment before it is taken from him, he owes no hire charge for the period it was in his possession, according to Abū Ḥanīfa and Mālik. Ash-Shāfi'ī and Aḥmad say that he owes a hire charge for the time it was in his possession. If someone misappropriates real estate and trees and it is destroyed by flood, fire or other things, he is liable for its value on the day he took it, according to Mālik, ash-Shāfi'ī and ash-Shaybānī. Abū Ḥanīfa and Abū Yūsuf say that he is not liable for anything which cannot be moved, like real estate, unless he damages it and it is destroyed in account of his action. Then he is liable for it. If someone misappropriates columns or bricks and builds with them, he does not own them according to Mālik, ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that he owns them and must pay their price because of the harm which would ensue from destroying the building to remove them. They agree that if someone misappropriates a piece of timber and builds it into a ship and its owner demands it when it has been launched, he is not obliged to remove it except in the view of ash-Shāfi'ī. The soundest position is that what ash-Shāfi'ī says is when it will not involve loss of life or property.

Transforming misappropriated property: If someone misappropriates gold or silver and makes it into jewellery or mints it into coins, or misappropriates lead or copper and makes it into tools and swords, Mālik says that in all such cases he owes the replacement for what he took in weight and description. It is the same if he takes timber which he makes into doors, or clay which he makes into bricks, or wheat which he makes into bread. Ash-Shāfi'ī says that he must return all the things that have been made to the person from whom the raw materials were taken. If there has been decrease, the

misappropriator is liable for the decrease. Abū Ḥanīfa agrees with Mālik, except about gold and silver when they have been fashioned.

Setting free without permission: If someone opens a bird's cage without permission and the bird flies away, he is liable for it, in the view of Mālik and Aḥmad. It is said that if he releases an animal or a chained slave who runs away, he is liable for their price. Ash-Shāfi'ī says that if the bird flies away or the animal escapes after a lapse of time, he is not liable. Abū Ḥanīfa says that he is not liable at all.

Misappropriation of land: If someone misappropriates real estate which is destroyed while in his possession by collapse, flood or fire, Mālik, ash-Shāfi'ī and Aḥmad say that he is liable for the price. Abū Ḥanīfa says that if he has derived no income from it, he is not liable. If someone misappropriates land and cultivates it and its owner takes it back before the harvest, Abū Ḥanīfa and ash-Shāfi'ī say that the usurper can be forced to remove the crop. Mālik says that if it is still the time of planting, the owner can compel him to remove it. If the planting time has passed, there are two opinions, the best known of which is that he cannot uproot them and receives rent. Aḥmad says if the owner wishes, he can leave the crop in his land until harvest for a fee, and if he wishes, he can pay the price of the crop which is then his.

Misappropriation and destruction of wine or pigs: If a Muslim spills out wine belonging to a *dhimmī*, ash-Shāfi'ī and Aḥmad say that he is not liable for it, as is the case when he destroys his pigs. Abū Ḥanīfa and Mālik say that he is liable for their value.

Right of Pre-emption

The Imams agree that a partner in property can pre-empt its sale. Mālik, ash-Shāfi'ī and Aḥmad say that a neighbour has no right to pre-empt, while Abū Ḥanīfa says that he has.

Length of right of pre-emption: Abū Ḥanīfa and ash-Shāfi'ī consider that the right has to be exercised immediately. If someone

delays asking for it when he is able to do so, his right is cancelled, like the option to return a sale. Ash-Shāfi'ī has one position that the right lasts for three days and another that it is perpetual unless the possessor clearly foregoes it. Mālik says that two matters pertain if the land is sold while the partner is present. One is that the right lasts for a sufficient period to allow it to be known that he has foregone pre-emption. And it is also reported from Mālik that it lasts for a year or two. The second is that a buyer can raise the case before a judge who can then oblige the person with the right of pre-emption to take it or leave it. So the Māliki position is that it is not immediate. Various things are reported from Aḥmad.

Pre-emption in respect of fruit trees: When fruits on palms are jointly owned by two partners and one of them sells his shares, can a partner pre-empt the sale? There is disagreement about what Mālik says about that. One opinion is that he may pre-empt and another that he may not. Abū Ḥanīfa says that he may pre-empt, and ash-Shāfi'ī and Aḥmad say that he may not.

Pre-emption with credit: If the person with the right of pre-emption cannot pay immediately, Mālik and Aḥmad say that he can have credit if he is reliable. Otherwise he must bring someone trustworthy to guarantee it. Ash-Shāfi'ī, in his new school, and Abū Ḥanīfa say that the pre-emptor can choose between paying immediately on accepting the credit terms.

Partnership in pre-emption: Pre-emption is divided between partners according to their shares in the property in respect of which they have the right of pre-emption. Each partner can take from the sale according to his share of it, according to Mālik and the sounder position of ash-Shāfi'ī, and Abū Ḥanīfa says that it is divided according to the original capital, which is also a position of ash-Shāfi'ī.

Inheritance of right of pre-emption: The right of pre-emption can be inherited according to Mālik and ash-Shāfi'ī and is not invalidated by death. When someone has the right to pre-empt and dies without knowing about it or before he can do so, the right is transferred to his heir. Abū Ḥanīfa says that it is invalidated by death

and not inherited. Aḥmad says it is only inherited if the deceased has asked for that right.

Pre-emption after alteration: If the buyer of some land builds or plants and then a pre-emptor asks to pre-empt, Mālik, ash-Shāfi'ī and Aḥmad say that the pre-emptor cannot ask the buyer to destroy what he has built or remove what he has planted. Abū Ḥanīfa says that the pre-emptor can compel the buyer to remove and destroy.

Buying off someone with right of pre-emption: When the right of pre-emption exists, and the buyer gives the pre-emptor some dirhams not to exercise his right, he is permitted to take them, according to all except for Shāfi'ī. He says the dirhams must be returned.

The Commenda (*Qirād* or *Muḍāraba*)

Imams agree that *muḍāraba* is permitted. *Muḍāraba* means *qirād* in the language of the people of Madina. It is when one person gives another money to trade with and the profit is shared. If he gives him goods and says, "Sell them and make its price a *qirād*," Mālik, ash-Shāfi'ī and Aḥmad say that this is an incorrect *qirād*. Abū Ḥanīfa says that it is valid. The *fuqahā'* disagree about a *qirād* with *filūs* [money other than gold or silver] since the Imams forbid it. If an agent takes the money of the *qirād* with proof, he is not quit of it if he denies, except with supporting proof, according to most scholars. The Iraqis say that his word is accepted when accompanied by an oath. If an investor gives his agent the money and the agent buys goods with it and then the money is lost before he gives it to the person who sold the goods, that seller cannot claim restitution from the lender according to Mālik, ash-Shāfi'ī and Aḥmad. The goods belong to the agent and he is liable for their price. Abū Ḥanīfa says that the original lender is liable.

Restrictions of time and transaction: The *qirād* cannot be for a set period after which it is forbidden to buy and sell, according to Mālik, ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says this is permitted. If the investor stipulates that the agent may only buy from a certain

person, or only sell to a certain person, the *qirāḍ* is void, according to Mālik and ash-Shāfi'ī, while the other two say it is allowed.

Invalid *qirāḍ*s: If the investor assumes the work when a *qirāḍ* is invalid and makes a profit, then the agent receives a wage for his work, according to Abū Ḥanīfa and ash-Shāfi'ī, and any profit and loss belong to the owner. Mālik disagrees and says that one refers to what is normally done in a similar *qirāḍ*.

Travelling expenses: If an agent travels, his expenses come from the *qirāḍ*, in the view of Abū Ḥanīfa and Mālik. Aḥmad says, "They are paid by himself, even his mount." Ash-Shāfi'ī has two statements, the more likely being that he should bear his own expenses.

Various ancillary factors: If an agent makes a *qirāḍ* on the basis that he takes all the profit and has no liability, that is permitted according to Mālik. The Iraqis say that the money becomes a simple loan, while ash-Shāfi'ī says that the agent has an appropriate wage and the profit belongs to the owner of the money. They disagree about what happens if the original lender buys some of the merchandise of the *muḍāraba*. Abū Yūsuf and Mālik say that it is valid, and ash-Shāfi'ī says that it is not valid, which is one of two views from Aḥmad. If the agent claims that the investor gave him permission to buy or sell for cash or on credit and the investor says that he only gave permission for cash transactions, Abū Ḥanīfa, Mālik and Aḥmad say that the word of the agent should be taken, when accompanied by an oath. Ash-Shāfi'ī says that the word of the investor should be taken, when accompanied by an oath.

Renting and Hiring

Hiring is permitted by most of the people of knowledge. It is binding on both sides. After a sound contract, neither side can cancel unless there is a fault in the goods, as when someone rents a house and finds after the contract that it is a ruin or has been damaged. If there is a defect in the item hired, the hirer has a choice because of the defect, according to Mālik, ash-Shāfi'ī and Aḥmad. The Ḥanafīs say that the contract can be cancelled with a valid

excuse. So if someone rents a shop and then his goods are destroyed or stolen or he goes bankrupt, he can cancel the rental agreement.

Time of payment: If someone rents an animal, a house or a ship for a known period for a known rent and there is no stipulation about whether payment is immediate or deferred, the position of ash-Shāfi'ī and Aḥmad is that it is due on the signing of the contract. When the lessor hands over the item to the lessee, then he is entitled to all the rent because the lessee has the use by the contract and therefore must hand over the hire which is obliged by taking possession of the item. The school of Abū Ḥanīfa and Mālik is that the hire is required little by little. If someone has had full use of something for a day, he owes its rent. If he rents a house every month for a known price, the three say that the rent is due for the first month and due at the beginning of each subsequent month. Ash-Shāfi'ī says in his well-known position that this arrangement is invalid.

Various factors concerning hire contracts: A hire contract for a waterskin, house, slave or any other thing is binding. It is not invalidated by the death of one or both of the parties. The obligation passes on to the heir according to Mālik, ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that it is cancelled by the death of either of the parties. A hire contract is not invalidated by the corruptness of a lessee, such as wine-drinking.

Period of contract: It is permitted to make a hire contract for two years when it is expected that the item will last that long, according to Abū Ḥanīfa, Mālik and Aḥmad and is the most likely position of ash-Shāfi'ī. One view of ash-Shāfi'ī says not more than a year and another thirty years. If someone hires something for Ramaḍān during Rajab, all but ash-Shāfi'ī say the contract is valid.

Responsibility for other people's goods: If a craftsman takes something to his house to work on it, he is responsible for any damage to it, according to Mālik. Ash-Shāfi'ī has two views. Abū Ḥanīfa says that he is not liable unless he himself damages it, which is the preferred position of ash-Shāfi'ī. It is the same whether the employee works for a company or on his own. The Ḥanafīs say that he is liable for what he can prevent, but not for what he cannot

prevent, like fire and flood. He is not liable for animals dying. A body of employees are not liable in the view of Mālik, even when they are working together, only the individual worker or workers who cause the damage. They are responsible if they alone do the work, whether it is done for a wage or something else, unless there is evidence that their work had been completed before it was destroyed, in which case they are free from liability. If a tailor and the owner of a garment disagree, all but Abū Ḥanīfa say that one takes the word of the tailor, but Abū Ḥanīfa says that of the owner.

Sale of rented goods: If someone hires out an item for a known period and sells during the hire period, the school of ash-Shāfi'ī is that it is permitted to sell it to other than the lessee. Abū Ḥanīfa says that it is not permitted to sell it, and the lessee has a choice between allowing the sale and cancelling the hire or rejecting the sale and confirming the hire. Abū Ḥanīfa says that it may only be sold with the consent of the lessee. Mālik and Aḥmad said that it is permitted to sell a hired item, even to other than the lessee. There is no disagreement about it being permitted to sell it to the lessee.

Death of rented riding animals: If someone hires an animal to ride and treats it in a normal way and it dies, he is not liable according to Mālik, ash-Shāfi'ī, Aḥmad and most Ḥanafīs. Abū Ḥanīfa himself says that he is liable for its price.

Hiring out jointly owned property: Mālik, ash-Shāfi'ī and most Ḥanafīs, except Abū Ḥanīfa himself, say that it is permitted to hire out joint property. Abū Ḥanīfa says that someone may only rent out his share and he does not permit a partner to pledge it or give it away either.

Renting land in return for produce: Mālik thinks that it is not permitted to rent land in return for what it produces, nor to rent it for food like fish, honey, sugar or other foods. Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad says that it is permitted to rent land for what it produces and other foodstuffs, in the same way as it is permitted to rent it in return for gold, silver and other goods.

Rulings about improvements made to rented land: If someone rents land for a year in order to cultivate plants on it which will last, or builds on it, and then the year ends, Mālik says that the owner can choose between paying the lessee for the plants or building or ordering him to remove them. Abū Ḥanīfa says the same, but says that if the removal would harm the land, he should pay the price and the planter cannot uproot them. If it is not harmful, he can ask for them to be removed. Ash-Shāfi'ī says that it is not up to the lessor, and the lessee is not obliged to remove them. They remain and the lessee is paid their price; or they remain and they share in them; or the lessor can order their removal and pay the lessee an indemnity.

Cultivation of Wasteland

The Imams agree that wasteland can be revived and a Muslim can do that. Three Imams say that doing so is not permitted for a *dhimmi* in Muslim land but Abū Ḥanīfa permits it. They disagree about whether the permission of the ruler is a precondition. Abū Ḥanīfa says that it is, but Mālik says that land which is in a wilderness or which people do not want does not require permission. If it is near an inhabited area, permission is required. Ash-Shāfi'ī and Aḥmad say that permission is not needed. They disagree about land which is owned, whose owner passes away and which, after a time, falls into ruin: can someone own it by reviving it? Abū Ḥanīfa and Mālik says he can, ash-Shāfi'ī says not, and two reports are reported from Aḥmad.

Criteria for the ownership of wasteland: What are the criteria by which land is considered owned and revived? Abū Ḥanīfa and Aḥmad say that it is by enclosure and bringing water to it, and building a structure with walls, even if it has no a roof. Mālik says that it is by what is normally known as reviving such land, by planting, digging a well and other such things. Ash-Shāfi'ī says that if it is for agriculture, it is by planting and bringing water. If it is for housing, then it is by building rooms and roofing them.

Water rights: They disagree about water from a river or well which more than fills the needs of a man, his animals and crops. Mālik says that if the well or river is in the wilderness, its owner is more entitled to what he needs from it and he must make available anything over that. If it is in a garden, he does not have to make available the excess unless his neighbour irrigates his plants by a well which is destroyed or a spring which caves in. Then he must make available the excess to his neighbour until he repairs the well or spring. If he neglects to repair it, he does not have to offer to him afterwards. There are two views about whether he is entitled to recompense. Abū Ḥanīfa and the Shāfi'ites say that he must give water to people and animals without recompense, but not crops, although it is recommended to forego a charge for the water. Aḥmad has two views.

Waqfs (Endowments)

A *waqf* is a permitted act of devotion. Mālik, ash-Shāfi'ī and Aḥmad say that it becomes binding by a verbal statement, even without a ruling from a judge. The endower ceases to own what he has endowed, even if it still remains in his possession. Ash-Shaybani says that if it leaves his possession, he should appoint a trustee over the *waqf* and surrender it to him, and that is one view reported from Mālik. Abū Ḥanīfa says that the *waqf* is a valid gift, but not binding, and the endower remains the owner until a judge renders judgement or his ownership is suspended by his death. They agree that a *waqf* is not valid in respect of something which will be destroyed by use, like gold, silver or food. Ash-Shāfi'ī and Aḥmad consider a *waqf* of an animal lawful. One view from Mālik says the same. Abū Ḥanīfa says that it is not lawful.

Ownership of *waqf* property: The preferred position of ash-Shāfi'ī is that, in a *waqf*, ownership is transferred to Allah and so the beneficiary of the *waqf* does not own it. Mālik and Aḥmad says that ownership is transferred to the beneficiary. Abū Ḥanīfa and his people differ, but say that if the *waqf* is valid, it is no longer owned

by the endower, but is not owned by the beneficiary either. Shared property is permitted to be made a *waqf*.

Beneficiaries of a *waqf*: If someone makes something a *waqf* for himself, that is valid according to Abū Ḥanīfa and Aḥmad. Mālik and ash-Shāfi'ī say that it is not valid. When the use is not specified, such as when someone says "This house is a *waqf*," that is valid according to Mālik. So if a *waqf* excludes others, as happens when someone says, "I make this a *waqf* for my children and their children," without mentioning the poor, he considers it valid and that after those named, it goes to his poor relatives and then to poor Muslims. That is the Ḥanafī position, but the most likely position of ash-Shāfi'ī is that a *waqf* is not valid if it is not specified how it is to be spent.

Various factors concerning *waqf* property: They agree that if a *waqf* is ruined, it does not return to the ownership of the endower. They disagree about whether a *waqf* can be sold and its price spent on similar causes. If it is a mosque, Mālik and ash-Shāfi'ī say that it remains as it is and may not be sold. Aḥmad says that it is permitted to sell it and spend its price on something similar. If the mosque cannot be restored, Abū Yūsuf says it is not sold, while ash-Shaybānī says that it reverts to its original owner.

Gifts

The Imams agree that gifts are made valid by offer and acceptance and receipt. There must be all three. Mālik says receipt is not necessary for its validity and binding nature. It becomes binding by offer and acceptance, but receipt is a precondition for its fulfilment. It can be claimed by the heirs of the person to whom the gift was given. If the giver does not give the gift before he dies, then there is no gift. Ibn Abi Zayd al-Mālikī says that a gift, *ṣadaqa*, or *waqf* is only achieved by actually taking possession. If the donor dies before then, it returns to being part of his normal inheritance. Aḥmad says that a gift is owned before actual possession, but receiving it must be with the permission of the giver. Abū Ḥanīfa disagrees.

Gifts of jointly owned property: Mālik and ash-Shāfi'ī say that it is permitted to give joint property, and the gift is sound when the giver hands over all of it to the recipient and so he has his full right and the share of the partner is like a deposit in his possession. Abū Ḥanīfa says that it is invalid in respect of anything that can be divided, but not in what cannot.

Life gifts: If someone gives a person the life gift of a house, which is that he has the use of it for the length of his life, the house returns to the owner when the beneficiary dies. This is the school of Mālik. If he gives him and his descendants the use, they have the use. When they die, it reverts to the owner because it is a gift of use and not ownership. Abū Ḥanīfa, ash-Shāfi'ī, in one view, and Aḥmad say that ownership goes to the beneficiary and his heirs and does not revert to the benefactor. If there are no heirs, it goes to the public treasury. Ash-Shāfi'ī has another position like that of Mālik.

Gifts to children: If someone gives his children a gift, he must be equal between them, according to Abū Ḥanīfa, Mālik and the most likely position of ash-Shāfi'ī. Aḥmad, ash-Shaybani, and one view of ash-Shāfi'ī hold that he can favour boys over girls, like the division of inheritance. It is disliked to single out some children rather than others. If a parent gives his child a gift, Abū Ḥanīfa says that he cannot take it back, while ash-Shāfi'ī says that he can always take it back. Mālik says that he can take a gift back, even after the child has received it, in respect of anything he has given by way of good will and love. He cannot take back what he has given as *ṣadaqa*. He can take it back as long as the gift has not been altered in the child's possession, or if the child incurs a debt on the strength of the gift, or the daughter marries, or it is mixed with similar property so that it cannot be distinguished. Aḥmad says three things, the most likely being that he can take it back.

Taking back a gift: Can someone take back a gift other than one to a child. Ash-Shāfi'ī says that someone can take back a gift from anyone he calls his child, real or metaphorical, like a grandchild, but not from a non-relative. Ash-Shāfi'ī does not consider a new debt or daughter's marriage as does Mālik, but makes it a precondition that

it remain in the control of the recipient and so it cannot be taken back if it has been made a *waqf* or sold, but can if it was rented or pawned. Abū Ḥanīfa says that if someone gives a gift to a relative, he cannot take it back.

Lost Property

The Imams agree that a found item should be advertised for a full year, unless it is something insignificant or something which will not last, and when its owner comes, he has the most right to it. If the finder consumes it after a year and then its owner wants to make him liable for it, he can do that. If it is given as *ṣadaqa* after a year, the owner can choose between liability and agreeing to that.

Picking up lost property: They agree that it is permitted to pick up something found, but is it better to leave it or pick it up? Abū Ḥanīfa has two positions: one is to pick it up and the other to leave it. Ash-Shāfi'ī has two positions: one is that it is better to pick it up and the other is that it is mandatory to do so. Aḥmad says it is better to leave it. If someone does pick it up then he should return it to its place. If he picks it up in order to return it to its owner, Abū Ḥanīfa says he has no liability. Ash-Shāfi'ī and Aḥmad say he is liable. Mālik says if he picks it up with the intention of preserving it and then puts it back, he is liable.

Lost animals: If someone finds a sheep in the desert where there are no other sheep and there is no habitation near it and he fears for it, Mālik says that he can choose between leaving it and eating it. He is not liable for it. It is the same with a cow if he fears that wild animals will attack it. The other three say that he is liable for it if the owner comes.

Various matters concerning lost property: If an item is advertised for a year and its owner does not come, Mālik and ash-Shāfi'ī say that the finder can keep it, give it as *ṣadaqa* or consume it, whether he is rich or poor. Abū Ḥanīfa says that if he is poor, he can keep it, but not if he is rich. Abū Ḥanīfa and Mālik say that if he gives it as *ṣadaqa* before he owns it and its owner allows that, it is all right.

Otherwise he is liable for it. Ash-Shāfi'ī and Aḥmad say that it is not permitted because it is a conditional *ṣadaqa*. When a camel is found alone in the desert, Mālik and ash-Shāfi'ī say that it is not permitted to take it. If someone takes it and then releases it, he owes nothing with Abū Ḥanīfa and Mālik, but ash-Shāfi'ī and Aḥmad says that he is liable for it.

Foundlings

If a foundling is found in Muslim territory, he is considered Muslim according to all but Abū Ḥanīfa, who says that if he is found in a church or synagogue or a town of *dhimmīs*, he is a *dhimmī*. The people of Mālik disagree about the Islam of a child who has discrimination but is not yet adult. There are three positions, one that it is valid, as Abū Ḥanīfa and Aḥmad say; the second that it is not valid, and the third that it is suspended, which is the view of ash-Shāfi'ī. If he denies being a Muslim after becoming adult, his denial is not accepted.

Chapter Twelve Shares of Inheritance

The Muslims agree that there are three causes for mutual inheritance: kinship, marriage and clientage, and that there are three impediments which prevent inheritance: slavery, killing and difference of religion. The Prophets do not leave inheritance; what they leave is *ṣadaqa* for the Muslims. Only the Shi'a disagree with that. They agree that there are ten male heirs: sons, grandsons, fathers, paternal grandfathers, brothers, brother's sons, paternal uncles and their sons, and freed slaves. There are seven female heirs: daughters, granddaughters, mothers, grandmothers, sisters, wives and female freed slaves. The shares determined by the Book of Allah are six: half, fourth, eighth, two-thirds, third and sixth.

Maternal relatives not mentioned in Qur'an: There is disagreement concerning the inheritance of the maternal relatives who have no share mentioned in the Book of Allah. They are ten categories: mother's father, all great grandparents on the mother's side, daughter's children, sisters' daughters, sisters' sons, sons of maternal sisters and uncles on the mother's side, daughters of paternal aunts and uncles and maternal aunts, and those who are related through them. The school of Mālik and ash-Shāfi'ī is that they do not inherit. Abū Ḥanīfa and Aḥmad believe that they do inherit.

Apostates: They disagree about the property of an apostate if he is killed or dies. There are three positions. The first is that all his property which he acquired while Muslim is booty, and this is the position of Mālik, ash-Shāfi'ī and Aḥmad. The second is that it goes to his Muslim heirs whenever he acquired it. This is the position of Abū Yūsuf and ash-Shaybānī. The third is that what he acquired while a Muslim goes to his Muslim heirs and the rest to the treasury. This is the position of Abū Ḥanīfa.

Murderers: They agree that a murderer cannot inherit from his victim. They disagree about accidental killing. Abū Ḥanīfa, ash-Shāfi'ī

and Aḥmad say that the killer does not inherit, but Mālik says that he does, less the blood money.

People dying together: In the case of people who die together whether they are drowned, murdered, killed in collapsed buildings, burned or die of the plague, when it is not known which died first, they do not inherit from one another, and the legacy of each of them goes to the rest of his heirs, except for one view of Aḥmad.

Well-known question: The well-known question about shares which gives rise to different views is when there is a husband, mother and brothers by the mother and a full brother. Mālik and ash-Shāfi'ī say that the husband receives a half, the mother a sixth, the brothers by the mother a third and then the full brother shares with the brothers by the mother in the third allotted to them. The school of Abū Ḥanīfa and Aḥmad is that the third is for the brothers by the mother and the full brother is eliminated.

Inheritance of grandparents: Grandfathers and grandmothers receive a sixth with all. The position of Mālik is that only two grandmothers inherit: the mother's mother or her mother and the father's mother or her mother. The school of Abū Ḥanīfa is that the mother of the father's father also inherits. The position of ash-Shāfi'ī varies: one is like Mālik and one like Abū Ḥanīfa. When the grandmother on the father's side is closer than the great grandmother on the mother's side, they share in the sixth. This is the position of Mālik and ash-Shāfi'ī. Abū Ḥanīfa says that the sixth goes to the grandmother on the father's side if she is nearer.

Akdariyya question: The grandfather receives a share with the brothers and they inherit with him and they are not eliminated. There is disagreement about the *akdariyya*, which is when there is a husband, mother, grandfather and full sister of the father. Mālik, ash-Shāfi'ī and Aḥmad say that the husband receives a half, the mother a third, the sister a half and the grandfather a sixth, and then the grandfather and sister combine their share and then divide it so that he receives two-thirds and she receives a third. Abū Ḥanīfa says that the mother gets a third, the father a half, and the rest is for the grandfather and the sister gets nothing.

Dual claims: If someone has a dual claim to a share, Mālik and ash-Shāfi'ī say that he inherits only by reason of the stronger claim. Abū Ḥanīfa and Aḥmad say he inherits for both reasons.

When shares exceed the total: The position accepted and acted on by most *fuqahā'* is that if the shares exceed the total estate, the deficit is distributed proportionally and adjusted. Then it is divided according to their shares. This is also the case with debts when they exceed the estate, the deficit is divided according to shares.

Inheritance of premature babies: Mālik and Aḥmad say that a premature child does not inherit or leave inheritance unless it lives for a reasonable length of time or suckles, or some say that it sneezes. Abū Ḥanīfa and ash-Shāfi'ī say that if it breathes, moves or sneezes, it inherits and leaves inheritance.

Bequests

A bequest is to transfer ownership of something away from the direct heirs after death. It is agreed to be permitted and recommended but not mandatory, except for someone who has a trust in his possession which he must return or a known debt or a deposit without witnesses. If he has some liability of that nature, the bequest is obligatory for him.

Up to a third: A bequest of a third to other than an heir is permitted by consensus and it does not require permission. A bequest to an heir depends on the permission of the other heirs. If someone makes a bequest of more than a third and the heirs allow that, the school of Mālik is that, if they allow it when he is ill, they cannot retract it after his death, but if that happens while he is healthy, they can retract it after his death. Abū Ḥanīfa and ash-Shāfi'ī say that they can retract it.

Bequest of camels: If someone is bequeathed a camel, three permit that it be a female or male camel because they are the same. ash-Shāfi'ī says that the sex of the animals has to be specified.

Bequests when death is near: Gifts, emancipation, *waqfs* and other bequests up to one third are permitted in a final illness. They disagree about what happens if someone gives something when retaliation is about to be taken from him, or he is in the front rank facing the enemy, or is at sea in a fierce storm, or a woman is pregnant. Abū Ḥanīfa, Mālik and Aḥmad say that such gifts form part of the third. Ash-Shāfi'ī has two views, the sounder of which is that they are part of the third, and the second that it is from the entire estate. Mālik says that when a woman is nine months pregnant, she cannot dispose of more than a third of her wealth.

Executors and guardians: Ash-Shāfi'ī and Aḥmad say that it is permitted to appoint a non-relative to look after children, even when there is a father or grandfather, if the appointee is reputable. Abū Ḥanīfa and Mālik say that it is valid to make a non-relative an executor for children and settling debts and distributing the third when there is a father and grandfather. If someone appoints a just person who then becomes iniquitous, that executorship is cancelled, as he cannot then be considered trustworthy. This is the position of Mālik and ash-Shāfi'ī. Aḥmad has two views.

Bequests to non-Muslims: They disagree about bequests to unbelievers. Mālik, ash-Shāfi'ī and Aḥmad say that they are valid, whether they are people outside *Dār al-Islām* or *dhimmīs*. Abū Ḥanīfa says that they are not valid for people of war outside *Dār al-Islām*.

Specificity of bequests: A precondition is that the bequest must be specified. If it is general, all except Mālik say that it is invalid, although there is another report from him that it must be specific.

Bequests to dead people: A bequest to a dead person is invalid, according to Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad, while Mālik says that it is valid. If the dead person died owing a debt or expiation, it is used for that, otherwise it goes to his heirs.

Bequests of minors: If a bequest is made by a child who has not reached puberty who knows what he bequeaths, then his bequest is allowed by Mālik. Abū Ḥanīfa says that it is not allowed. The view

of ash-Shāfi'ī varies, but the soundest position of his school is that it is not allowed, which is what Aḥmad says.

Unwitnessed wills: If someone writes a will and it is known that it is in his handwriting but there is no witness to it, all but Aḥmad say that judgement cannot be made by it. Aḥmad says that it can, as long as it is not known that he retracted it.

Dual executorship: If someone appoints two men as executors, can one of them act in the absence of the other? All but Abū Ḥanīfa say that doing so is not permitted. Abū Ḥanīfa says it is permitted for eight specific things; buying the shroud, preparing the corpse, feeding and clothing children, returning a specific deposit, paying debts, carrying out a specific bequest, freeing a specific slave and arguing for the rights of the dead.

Marriage close to death: They disagree about whether a marriage in a final illness is valid. All but Mālik say it is valid. Mālik says that it is not valid when it is feared that someone will die, and he says that marriage under those circumstances is invalid, whether it is consummated or not.

Bequests in the event of no heir: If someone wills away all his property when he has no heir, Abū Ḥanīfa says that it is valid, as does one statement from Aḥmad. Ash-Shāfi'ī, Mālik, and Aḥmad in another view say that it is only valid for a third.

An executor buying from an orphan's share: Can an executor purchase something for himself from an orphan's property? Abū Ḥanīfa says that it is permitted if he pays a higher price, but if he buys it with its normal price, that is not allowed. Mālik says that he can buy it for the normal price. Ash-Shāfi'ī says that it is not permitted at all, and Aḥmad has two statements.

Disputes about handing over an orphan's property: If an executor claims that he has paid the money owed to an orphan after he has come of age, Abū Ḥanīfa and Aḥmad say that the word of the executor should be accepted, when accompanied by his oath, in the same way that it is accepted in questions of loss of property. Mālik and

ash-Shāfi'ī say that the word of an executor is only accepted when accompanied by clear evidence.

Various bequests: A bequest to a killer is valid according to Abū Ḥanīfa, Mālik and Aḥmad. Ash-Shāfi'ī has two statements, the sounder being that it is valid. If someone makes a bequest to a mosque, all but Abū Ḥanīfa say it is valid. Abū Ḥanīfa says that it is not valid unless he states what it is to be spent on. If he makes a bequest to the sons of a person, it only includes the males and they share it equally. If it is made to the children, males and females share equally.

Payment to executors: If an executor is wealthy, is he permitted to consume some of an orphan's property in case of need? The school of Abū Ḥanīfa is that he may not consume it at all, while ash-Shāfi'ī and Aḥmad say that he may take the minimum wage for his work. Is he obliged to return what he takes? Ash-Shāfi'ī and Aḥmad have two positions. Mālik says that he should abstain if he is wealthy and take an appropriate amount if he is poor.

Chapter Thirteen

Marriage

There is consensus that marriage is one of the legal contracts which is *sunna*. The Imams agree that if someone desires it and fears fornication, then the recommendation is stressed for him. It is better for him than *ḥajj*, *jihād*, prayer and voluntary fasting. Marriage is recommended for someone who needs to marry and has enough money by ash-Shāfi'ī and Mālik. Aḥmad says that if someone desires it and fears fornication, it is mandatory. Abū Ḥanīfa says that it is recommended and considers it better than devoting oneself to worship.

Age for marriage: Marriage is only valid for someone allowed to dispose of his own affairs, according to the *fuqahā'*. Abū Ḥanīfa says that the marriage of a child with discrimination is valid, but that of someone who is mentally defective is dependent on his guardian. A guardian other than the father can marry off an orphan before puberty if he looks after him like a father, according to all except ash-Shāfi'ī who forbids it.

Appropriate guardians: Ash-Shāfi'ī and Aḥmad say that a marriage is only valid with a male guardian. If a woman contracts a marriage, it is not valid. Abū Ḥanīfa says that the woman can give herself in marriage if she is someone who disposes of her own property, and there is no objection unless she marries herself to someone inappropriate. Mālik says that if she is noble and beautiful, her marriage is only valid with a guardian. If she is otherwise, a marriage can be undertaken by a non-relative with her consent. Mālik says that a brother is more entitled than a grandfather. A full brother is advanced before a half brother with Abū Ḥanīfa and ash-Shāfi'ī, but Mālik says that they are equal. Ash-Shāfi'ī says that a son cannot be his mother's guardian, but the other three say that he can. Mālik puts a son before a father, but Aḥmad puts a father first.

Guardianship in the absence of close relatives: If the closest guardian is away on a journey of the distance for which the prayer is shortened, the *qāḍī* should give a woman in marriage rather than a distant relative, according to ash-Shāfi'ī. The others say that if the absence is definitive, a more distant relative becomes guardian. A definitive absence, according to Abū Ḥanīfa and Aḥmad, is when someone is in a place where a caravan arrives only once a year. If a virgin's guardian is absent and his location is not known, Mālik says that her brother can give her in marriage with her permission, as does Abū Ḥanīfa, but not ash-Shāfi'ī. Is the marriage valid if a more distant relative gives in marriage when a closer relative is present? All but Mālik say that it is not valid. He says it is valid, except in the case of a father and a virgin.

Marriage of virgins: Ash-Shāfi'ī says that a father and grandfather can marry off a virgin without her permission up to any age. Mālik says that about a father, and Aḥmad about a grandfather. Abū Ḥanīfa says that it is not allowed to give away a sane adult virgin in marriage without her consent. If a woman is no longer a virgin, it is not permitted to give her in marriage without her permission, if she is adult, by consensus.

Marriage to unsuitable husbands: If a guardian and a woman agree to a marriage with an unsuitable person, all but Aḥmad consider it valid. If a guardian marries a woman to someone unsuitable with her consent, ash-Shāfi'ī says that it is not valid. Mālik says that the disagreement or agreement of a guardian does not matter if she consents to marry a Muslim, and none of her relatives can object to it. Abū Ḥanīfa says that the marriage is binding. Ash-Shāfi'ī considers suitability in respect of religion, lineage, profession, freedom and lack of defects, and some add wealth. Abū Ḥanīfa says the same but not freedom from defects. Mālik says that it only refers to equality in the *dīn*. Does lack of suitability affect the validity of a marriage? Abū Ḥanīfa says that guardians have the right to object. Mālik says that it is invalid and there are two views reported from ash-Shāfi'ī, the sounder of which is that it is invalid unless the wife and relatives consent. Aḥmad has two views, the more likely being that it is invalid.

Improper dowries: If a father or grandfather gives a young girl in marriage without a suitable dowry, she must be given a proper dowry, and the same holds true if someone marries his young son to a woman for more than the proper dowry, in which case, according to ash-Shāfi'ī, it must be reduced to a suitable dowry. Abū Ḥanīfa, Mālik and Aḥmad say that the original dowry is binding.

Witnesses: Marriage is only valid with witnesses according to three Imams, but Mālik says that it is valid without witnesses and what is important here is making the marriage public and agreeing not to keep it secret. If a secret contract is made which stipulates concealment, Mālik considers the marriage invalid. The other three say that its concealment is not injurious, provided there are two witnesses. Ash-Shāfi'ī and Aḥmad say that a marriage is only valid with two reputable male witnesses. Abū Ḥanīfa says it can be a man and two women or the testimony of two non-upright male witnesses. When a Muslim marries a *dhimmī* woman, all but Abū Ḥanīfa say that the contract must have two Muslim witnesses. Abū Ḥanīfa says that they can be two *dhimmīs*.

Wording of the contract: Ash-Shāfi'ī and Aḥmad only consider a marriage valid if the verbs '*zawwaja*' and '*nakaḥa*' (marriage) are used in the contract. Abū Ḥanīfa says that any suitable phrase which indicates a perpetual bond is adequate and Mālik agrees with this, provided that the dowry is also mentioned.

Unlawful marriage partners

By agreement, a wife's mother is forbidden forever by the mere contract with the daughter and a daughter is forbidden by a consummated marriage with her mother even if she was not in the care of her mother's husband.

Fornicators: Three say that marriage with a fornicatress is valid, but Aḥmad says that it is forbidden to marry her unless she repents. If someone fornicates with a woman, it is not unlawful for him to marry her or her mother or daughter, according to Mālik and ash-Shāfi'ī. Abū Ḥanīfa says that the marriage barriers are established

by fornication. Aḥmad says that if someone commits sodomy with a boy, his mother and daughter are lawful for him to marry. Ash-Shāfi'ī and Abū Ḥanīfa say that if a man commits fornication with a woman and then marries her, they can have relations without an 'idda. Mālik and Aḥmad says that there must be an 'idda first.

Sisters: Marrying two sisters at the same time is forbidden, as is a woman and her aunt, or having relations with two sisters who are slaves.

Becoming Muslim with more than four wives: If someone who has more than four wives becomes Muslim, three say that he should choose four of them, as long as two sisters are not involved, while Abū Ḥanīfa says that if there was one contract with all them, it is invalid. Otherwise the first four are valid.

Apostates: If one of a couple apostatises, Abū Ḥanīfa and Mālik say that the couple must separate, whether it happened before or after consummation. Ash-Shāfi'ī and Aḥmad said that if it was before consummation, there is separation, but if after, it is based on the end of the 'idda.

Temporary marriage: They agree that temporary marriage is invalid, which is when someone stipulates a length of time for the marriage. The only exception to this are the Shi'a who allow it.

Marriage to enable a divorced couple to remarry: If someone marries a woman in order to allow her to marry a prior husband, with the condition that, when he has had intercourse with her, she is divorced, Abū Ḥanīfa says the marriage is valid but not the precondition. Mālik says that remarriage is only allowed after a sound marriage whose aim is not simply to enable remarriage. Ash-Shāfi'ī has two views, the sounder of which is that the marriage is not valid. Aḥmad says that it is not valid and such a thing cannot be a precondition.

Defects which permit the annulment of marriage

There are nine defects in which choice is confirmed: three of them are common to men and women: insanity and the two forms of leprosy; two only affect men, which are a severed penis and impotency; and four affect women, which are a bone in the vagina which prevents intercourse, blockage of the vagina, a break between the vagina and urinary passage, and flesh blocking the vagina. Abū Ḥanīfa says that it is not confirmed that a man can annul marriage on account of any of those things, while a woman has choice in the two matters which affect men. Mālik and ash-Shāfi'ī say that there is choice in all of these things, except for the break between the two passages. Aḥmad affirms it in all of that. If either befalls the man after the contract and before consummation, the woman has the choice with Mālik, ash-Shāfi'ī and Aḥmad. After consummation, ash-Shāfi'ī say there is only a choice in respect of impotency.

Dowries

Marriage is not unsound when the dowry is unsound, according to Abū Ḥanīfa and ash-Shāfi'ī, and there are two views from Mālik and Aḥmad. The minimum dowry according to Abū Ḥanīfa and Mālik is that for which a thief's hand is cut off. Abū Ḥanīfa says that it is ten dirhams or a dinar and Mālik says it is a quarter of a dinar or three dirhams. Ash-Shāfi'ī and Aḥmad say that there is no minimum and that anything which has a price in a sale can be a dowry, as well as teaching the Qur'an, which Mālik also permits as a dowry. Abū Ḥanīfa and Aḥmad in one transmission say that teaching the Qur'an cannot be a dowry.

Ownership of the dowry: The woman owns the dowry when the contract is agreed, in the view of all but Mālik who says that she only owns it upon consummation or on the death of the husband, when she is entitled to half. Once her dowry has been paid in full, Abū Ḥanīfa says that the husband can travel with his wife wherever he wishes, and it is also said that he cannot take her from her home

to another country because exile entails harm. The other three say that he can travel with her wherever he wishes.

Dowry in the case of divorce before consummation: If a woman married by proxy is divorced before consummation and allotment of the dowry, she only receives a consolation gift, in the view of Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad in one statement. Elsewhere Aḥmad says that she should receive a half. Mālik says that she is not entitled a gift but it is recommended. There is no such gift for other than a woman married by proxy in the evident school of Aḥmad, but there is another view that it is mandatory for every divorced woman, which is the position of Abū Ḥanīfa. Ash-Shāfi'ī says that it is mandatory for every woman divorced before consummation when she does not receive half of the dowry, as well as for every divorced woman, unless she initiated the divorce. There is disagreement about what the amount of gift should be. Abū Ḥanīfa says that it should be three garments: shift, scarf and wrapper, provided that their value is not more than half of a suitable dowry. Ash-Shāfi'ī and Aḥmad in one view say that it is up to the discretion of the judge.

Determining a suitable dowry: The Imams disagree about determining a suitable dowry. Abū Ḥanīfa says it is determined by her connection to paternal relatives and not maternal ones. Mālik says it is determined by the circumstances of the woman in respect of beauty, honour and property, but not lineage, unless she is from a certain tribe whose dowries do not vary. Ash-Shāfi'ī says that one considers her paternal relatives, and Aḥmad says that all relatives are considered.

Disputes about payment of dowries: If the couple disagree about whether the dowry has been paid, Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad say that the word of the wife is taken. Mālik says that if it is a land in which dowries are paid before consummation, as in Madina, then, after consummation, one takes the word of the husband and, before it, that of the woman.

Authority over contract: The Imams disagree about who is in charge of the contract. Abū Ḥanīfa says it is the husband, and that is

the new school of ash-Shāfi'ī. Mālik says it is the guardian. Both views are reported from Aḥmad.

A wife withholding herself pending payment of dowry: If a marriage is consummated or a husband is alone with his wife before she receives her dowry, and then she refuses intercourse after that, Abū Ḥanīfa and Aḥmad say that she can do that until she receives her dowry. Mālik and ash-Shāfi'ī say that she cannot do that after consummation but can do it after being alone.

When dowry is obligated: The dowry is obligated by seclusion in which there is no impediment or by consummation. Ash-Shāfi'ī says that it is only by consummation. Mālik says that it is by seclusion for a long time, even if there is no consummation. Abū Ḥanīfa and Aḥmad say it is by seclusion with no impediment.

Wedding feast: A wedding feast is *sunna* in the school of ash-Shāfi'ī and recommended according to the others. It is recommended to accept an invitation to a wedding feast, according to Abū Ḥanīfa, mandatory in the well-known position of Mālik, the most likely position from ash-Shāfi'ī, and in one of Aḥmad's positions. Strewing and picking up sweets in the wedding feast is not disliked by Abū Ḥanīfa, but is disliked by ash-Shāfi'ī and Mālik. Aḥmad has two positions. All except Aḥmad say that feasts for other events like circumcision are also recommended.

Division of time, disobedience of the spouse and companionship with wives

It is confirmed in the *Ṣaḥīḥ* that the Messenger of Allah, may Allah bless him and grant him peace, made equal division between his wives in terms of nights but not intercourse, even though that is recommended. A wife's disobedience causes her right to maintenance to be cancelled and is forbidden. Each of the spouses should treat the other well and a husband should spend what is necessary for his wife without delay or showing-off.

Coitus interruptus: Coitus interruptus with a free woman without her consent is permitted in the school of ash-Shāfi'ī, although he himself forbade it. The other three say it is permitted only with a wife's consent.

Time with new wives and travelling with wives: If a new wife is a virgin, her husband should spend seven nights with her and then divide his time equally between his wives. If she is a non-virgin, the time is three nights, according to all except Abū Ḥanīfa who say that she is not preferred in the division. Abū Ḥanīfa says that a husband can travel with one of his wives without choosing by lot even if they do not agree. Mālik has two positions, one like Abū Ḥanīfa and the other is that it is only permitted with their consent or choosing by lot. This is the school of ash-Shāfi'ī and Aḥmad. If he does not do that, they say that he must make it up to them, while Mālik and Abū Ḥanīfa say that he does not have to do so.

Chapter Fourteen

Divorce

Divorce is agreed to be disliked. Abū Ḥanīfa says that it is forbidden. The Imams agree that divorce in a consummated marriage during menstruation, or in a period of purity in which he has had intercourse with the wife, is forbidden although the divorce takes place. Similarly treble divorce is forbidden but takes place. It is an innovation.

Triple divorce in one pronouncement: The Ḥanafīs, Mālikīs and Ḥanbalīs agree that if someone says to his wife, "If I divorce you, you are divorced three times," and then he divorces her, the divorce is executed and it is a treble divorce. The Shāfi'ītes disagree about that.

Divorce by someone who is drunk: They disagree about a divorce by someone who is drunk. Abū Ḥanīfa and Mālik say that the divorce occurs as does the more likely position of ash-Shāfi'ī. There are two statements from Aḥmad, the more likely being that it occurs.

Divorce under compulsion: They disagree about the divorce of someone who is forced to do it. Abū Ḥanīfa says that it takes place. The other three say that it does not if he pronounced it to defend himself. They disagree about a threat which he thinks will be carried out and whether that amounts to force. Three say it does while there are three positions from Aḥmad, one saying that it does, one saying that it does not, and the third saying that if it is a threat of killing or amputation of a limb, it does.

Conditional and uncertain divorce: They disagree about someone who says to his wife, "You are divorced, if Allah wishes." Mālik and Aḥmad say that the divorce takes place, while the other two say that it does not. They disagree about when one is unsure about divorce. Three say that the basis is certainty, and the well-known position of Mālik is that it usually entails divorce.

Divorce during a final illness: They disagree about when an ill person divorces a woman with a final divorce and then dies in that illness. All say that she inherits, except for Abū Ḥanīfa who stipulates that the divorce must not be at her request. Abū Ḥanīfa says that she inherits as long as she is still in her *'idda*. If he dies after the end of the *'idda*, she does not inherit. Aḥmad says that she inherits as long as she does not remarry. Mālik says that she inherits even if she re-marries. All three positions are recorded from ash-Shāfi'ī.

Delayed divorce: They disagree about someone who says to his wife, "You are divorced in a year." Abū Ḥanīfa and Mālik says she is divorced immediately, and the other two say that it is not until the period is over.

Taking back divorced wives

They agree that it is permitted to take back a divorced woman but disagree about whether or not it is lawful to have intercourse with a woman taken back without a verbal declaration. Abū Ḥanīfa and Aḥmad in the most likely statement say that it is not unlawful, and the others say that it is. They disagree about whether intercourse indicates taking back. Abū Ḥanīfa and Aḥmad in the more evident position say that it does and no other words are required. Mālik, in the well-known position, says that, if this is his intention, it happens. Ash-Shāfi'ī says that that can only be accomplished by words. Is it a precondition for there to be witnesses to the taking back? Three say that it is not but is recommended, while ash-Shāfi'ī has two positions, the sounder of which is that it is recommended and the other that it is a precondition, as is also reported from Aḥmad.

Taking back after a treble divorce: They agree that if someone divorces his wife three times, she is not lawful to him until she has married someone else and had intercourse with him in a valid marriage. They disagree about whether she becomes lawful if the intercourse occurs while she is menstruating or in *iḥrām*. Mālik says no and the others say that she does.

Khul' (Divorce in Exchange for Remuneration)

Khul' is agreed upon. If a woman dislikes her husband because of his appearance or character, she can instigate divorce from him for remuneration. They agree that it is permitted without any cause and not disliked.

Irrevocable divorce: *Khul'* is an irrevocable divorce, according to Abū Ḥanīfa, Mālik, one statement of Aḥmad, and one of three positions of ash-Shāfi'ī. Aḥmad says in one statement that it constitutes annulment and not divorce.

Amount of payment: Is it disliked for more than the original dowry to be paid? Mālik and ash-Shāfi'ī say it is not. Abū Ḥanīfa says that if the fault is on the wife's part, the husband can take more, and if it is on his part, it is disliked for him to take anything. Aḥmad says that it is disliked in all cases.

Khul' in exchange for nursing: If a wife obtains a *khul'* in exchange for nursing her child for two years, that is permitted. If the child dies before two years, Abū Ḥanīfa and Aḥmad say that her husband can take her back by paying the cost of nursing for the stipulated time. Mālik has two views, one being that he cannot take her back for anything, and the other is like the position of Abū Ḥanīfa and Aḥmad. Ash-Shāfi'ī has two statements, one is that it is cancelled and no other child can replace it, and the second is that it is not and she can be given a similar child to nurse.

Khul' by proxy: A father cannot obtain a *khul'* for his young daughter for any of her property, according to Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad. Mālik says that he can do that.

Li'ān (mutual cursing)

They agree that if someone slanders his wife, accuses her of adultery, or denies the paternity of a child she is carrying, without any evidence, he must receive the *ḥadd* or carry out the *li'ān*, which is that he must swear four times by Allah that he is telling the truth

and a fifth that the curse of Allah is on him if he is lying. If he does this, then she either receives the *ḥadd* or does the *li'ān* herself, which is to swear four times by Allah that he is a liar and a the fifth time that the anger of Allah is on her if he is telling the truth. If the husband refuses to perform the *li'ān*, then Mālik, ash-Shāfi'ī and Aḥmad say that the *ḥadd* is imposed on him. Ash-Shāfi'ī says he is a *fāsiq*. If the woman refuses, she is imprisoned until she performs the *li'ān* or confesses. This is also one position of Aḥmad. Mālik and ash-Shāfi'ī say that she must receive the *ḥadd* punishment.

Denial of paternity by *li'ān*: They disagree about whether the *li'ān* is valid to deny responsibility for a pregnancy before birth. Abū Ḥanīfa and Aḥmad say that if a husband denies causing the pregnancy, there is no *li'ān* between them and the paternity is not disavowed. If he accuses her of adultery, then there is a *li'ān* because of the slander, and the lineage of the child is not disavowed, whether it is born after six months or less. Mālik and ash-Shāfi'ī say that he can perform the *li'ān* to deny paternity. But Mālik stipulates that he be free of her for one or three menstrual periods.

Annulment or divorce: They disagree about whether the *li'ān* constitutes annulment or divorce. Abū Ḥanīfa says it is a final divorce. The others say that it is annulment. Ash-Shāfi'ī and Mālik say that it creates a perpetual prohibition like nursing and she can never be lawful for him again.

Various ancillary matters: If a man accuses his wife of adultery with a particular man, mentioning him by name, Abū Ḥanīfa and Mālik say that there is a *li'ān* for the wife and a *ḥadd* for the man he slandered if the man requests it. Ash-Shāfi'ī has two positions: one is that one *ḥadd* is obliged and the other that there are two. Aḥmad says there is one. If he calls his wife an adulteress, the *ḥadd* is obliged for him even if he does not persist in his accusation. Mālik says that he cannot do the *li'ān* unless he claims that he saw the act, while ash-Shāfi'ī and Aḥmad say that he can perform the *li'ān*, even if he does not mention seeing the act. If four testify against the woman, one of whom is the husband, Mālik, ash-Shāfi'ī and Aḥmad say that it is not valid and all of them are slanderers who are flogged

except the husband, who can avert it by *li'ān*. Abū Ḥanīfa says that their testimony is accepted and the *ḥadd* is carried out on the wife.

'Idda following *li'ān*: If the woman has carried out the *li'ān* and been separated from her husband, Abū Ḥanīfa says that she must observe an '*idda*. The other three say that in this instance there is no '*idda*.

Paternity in unconsummated marriages: If a man marries a woman and divorces her after the contract without possibility of having had sexual intercourse, and then she produces a child six months or less after the contract, it is not attributed to him by any of the Imams, except Abū Ḥanīfa who says that if there is a contract made in the presence of a judge and then he divorces her and she produces a child six months later, it is ascribed to him, even if there was no intercourse.

Chapter Fifteen

Oaths

The Imams agree that if someone takes an oath to perform an act of devotion, he must fulfil it. Is someone permitted to do *kaffāra* instead of fulfilling an oath when he is able to fulfil it? Abū Ḥanīfa and Aḥmad say not, and ash-Shāfi'ī says that it is better not to. Both positions are reported from Mālik. They agree that it is not permitted to make the name of Allah an excuse in oaths to prevent acts of piety and to break ties of kinship. It is better to break the oath and do *kaffāra* if someone swears to abandon piety.

Swearing by Allah: They agree that all oaths sworn by Allah as well as by all His Names and attributes of His Essence, such as "By His Might", are binding. Abū Ḥanīfa excludes the knowledge of Allah.

Rash oaths: They disagree about a rash oath, which is an oath about something in the past which is a deliberate lie. Abū Ḥanīfa, Mālik and Aḥmad say that there is no *kaffāra* for it because it is too bad to be expiated. Ash-Shāfi'ī and Aḥmad say that there is. If someone swears to do or not do something in the future and breaks it, then he is obliged to do *kaffāra* for it.

Oaths without intention: If someone says, "I swear by Allah" or "I attest by Allah," Abū Ḥanīfa and Aḥmad say it is an oath, even if there is no intention. Mālik says that if he says the name of Allah, it is an oath, and if he does not and there is no intention, it is not. Ash-Shāfi'ī says that if he intends an oath, it is one. If he intends information, it is not. If it is general, they disagree about whether it is or not.

Swearing by the Qur'an: If someone swears by the copy of the Qur'an, Mālik, ash-Shāfi'ī and Aḥmad say that it is an oath and if he breaks it, he must do *kaffāra* for it. They disagree about the amount of *kaffāra* for it. Mālik and ash-Shāfi'ī say that it is one *kaffāra*.

Aḥmad has two views: one that there is one *kaffāra* and the other that there is *kaffāra* for every *āyat* of the Qur'an.

Oaths of unbelievers: Is the oath of an unbeliever binding? Abū Ḥanīfa says that it is not. The others say it is and he must do *kaffāra* for breaking it.

Kaffāra for breaking oaths: They agree that the *kaffāra* for breaking an oath is feeding or clothing ten poor people or freeing a slave, and someone who breaks an oath can choose any of them. If he is unable to do any of them, he must fast three days. Should the fast be consecutive? Abū Ḥanīfa and Aḥmad say that doing so is mandatory and Mālik that it is not. Ash-Shāfi'ī has two positions, the new school being that it is not mandatory. They agree that if someone feeds one poor person for ten days, that is only feeding one person, except for Abū Ḥanīfa.

Amount of kaffāra: They disagree about the amount that each poor person should be fed. Mālik says it is a *mudd* of a staple food and some sauce or accompaniment. If someone restricts it to a *mudd*, it is adequate. Abū Ḥanīfa says if it is wheat, it is half a *ṣā'*, and if it is barley or dates, a *ṣā'*. Aḥmad says that it is a *mudd* of wheat or flour or two *mudds* of barley or dates or two *raṭls* of bread. Ash-Shāfi'ī says that each poor person should receive a *mudd*. Clothing is according to the minimum of what is adequate for the prayer, according to Mālik and Aḥmad. So it is one garment for a man, like a long shirt or waist-wrapper, and for a woman it is a dress and scarf. Abū Ḥanīfa and ash-Shāfi'ī says that it is satisfied by the minimum of what is called clothing. Abū Ḥanīfa says that its minimum is a coat (*qubā'*), long shirt, cloak or mantle. There are two statements about a turban, head scarf, trousers and wrapper. Ash-Shāfi'ī says that all of that is allowed.

Recipients of kaffāra: They agree that it is permitted to give it to poor Muslims. If someone feeds five people and clothes five, Abū Ḥanīfa and Aḥmad say that it is enough, while Mālik and ash-Shāfi'ī say that it is not.

Time of *kaffāra*: They agree that *kaffāra* is obliged for breaking an oath. They disagree about whether it comes before or after breaking it. Abū Ḥanīfa says that it can only be after it. Ash-Shāfi'ī says it can be before breaking it. There are two views from Mālik. If he does it before breaking it, Mālik says that there is no restriction regarding the form in which it is done, but ash-Shāfi'ī says that fasting cannot precede breaking it.

Inadvertent oaths: They disagree about inadvertent oaths. Abū Ḥanīfa, Mālik and Aḥmad says that an inadvertent oath is if someone swears by Allah to something he thinks is as he swore and then the opposite becomes clear, whether he intended it or spoke hastily. Abū Ḥanīfa and Mālik say it can apply to the past or present. Aḥmad says it can only apply to the past. Three agree that there is no sin or expiation involved. Mālik says that it is when the oath is, "No, by Allah," or "Yes, by Allah," in a conversation with no intention of making a binding oath. Ash-Shāfi'ī says that it is something used in conversation in anger or vehemence, whether it is about the past or future.

Repeated oaths: If someone repeats an oath about the same thing or things and breaks it, Abū Ḥanīfa, Mālik and Aḥmad in one view say that there is *kaffāra* for each oath, but Mālik takes account of the intention of stress. He says that if he intended stress by the repetition, it incurs only one *kaffāra*. If he begins anew, there is *kaffāra* for each oath. Aḥmad also says that he owes one *kaffāra* for all. Ash-Shāfi'ī says that if it is about the same thing and he intends stress by that, then it is as he intended, and he must do one *kaffāra*. If he intended to begin anew, it is two oaths, and there are two views about whether *kaffāra* must be done once or twice.

Chapter Sixteen

'Idda (waiting period)

They agree that the '*idda* of a pregnant woman ends when she gives birth and that the '*idda* of a woman who does not menstruate is three months, and that the '*idda* of a woman who menstruates is three periods if she is free, and two if she is a slave. "Periods" means periods of purity, according to Mālik and ash-Shāfi'ī, periods of menstruation with Abū Ḥanīfa, and two things are reported from Aḥmad.

Husbands who go missing: They disagree about the wife of a missing man. Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad in one view say that she cannot remarry until the end of a period beyond which he could no longer reasonably be expected to be alive. Abū Ḥanīfa says one hundred and twenty years and ash-Shāfi'ī and Aḥmad ninety years. Ash-Shāfi'ī says that the wife can always seek maintenance from the husband's property. If it is impossible, she can seek a dissolution of the marriage on the grounds of lack of maintenance. Mālik and the old school of ash-Shāfi'ī and Aḥmad in one position say what 'Umar decided, which is that she must wait for four years, which is the maximum length of pregnancy, plus four months and ten days for the '*idda* of a widow, and then she can re-marry.

Definition of missing: They disagree about the definition of a missing man. Ash-Shāfi'ī says that it is a man about whom there is no news and it seems probable that he is dead. Mālik and ash-Shāfi'ī in the old school say that there is no difference between his being cut off because of death or for some other reason. Aḥmad says that he is the one of whom there is no news because he is probably dead, like a soldier missing in action, or someone who was on a ship which sank and some survived and some drowned. If he travelled for commercial reasons and there is no news of him and it is not known whether he is alive or dead, his wife cannot remarry until she is certain of his death or a length of time passes which would preclude

him being alive. Abū Ḥanīfa says that a missing person is someone about whom there is no news.

Missing husband who returns: They disagree about what happens if the first husband returns after a woman has remarried. Abū Ḥanīfa says that the second contract is void and she belongs to the first husband. If the second man has had intercourse with her, he owes her a suitable dowry and she observes an *'idda* for the second marriage and returns to the first husband. Mālik says that if the second marriage has been consummated, she is the wife of the second husband and he must pay back the dowry paid to her by the first husband. If the second marriage has not been consummated, she returns to the first husband. Ash-Shāfi'ī has two positions, the sounder of which is that the second marriage is invalid, and the other that the first marriage is invalid. Aḥmad says that if the second marriage has not been consummated, she returns to the first husband. If it has been, then the first husband can choose between keeping her and paying the dowry the other gave, or leaving her and taking his dowry.

Length of pregnancy: They agree that the period of pregnancy can be as little as six months but disagree about its maximum. Abū Ḥanīfa says two years and Mālik has various reports, saying four, five or seven years. Ash-Shāfi'ī says four years. Aḥmad has two positions, one like ash-Shāfi'ī and one like Abū Ḥanīfa.

Mourning: Mourning is mandatory during the *'idda* for widowhood. It is to abandon adornment and anything which would invite marriage. Abū Ḥanīfa says that a widow can only leave the house out of necessity. Mālik and Aḥmad say that she can go out absolutely. Ash-Shāfi'ī has two positions, the sounder of which is that of Abū Ḥanīfa. Young and old are the same in respect of mourning according to three Imams, while Abū Ḥanīfa says that a child has no mourning. A *dhimmī* married to a Muslim must observe both *'idda* and mourning, except according to Abū Ḥanīfa.

Chapter Seventeen

Relationship by Suckling

They agree that nursing makes unlawful the same things that blood relationship does. They disagree about the number of times necessary to achieve this. Abū Ḥanīfa and Mālik say once, ash-Shāfi'ī says five times, and Aḥmad has three positions: five, three and one. They agree that the prohibition by suckling is brought about if the child receives the milk during the first two years. They disagree about what happens after that. Abū Ḥanīfa says two and half and the others say only two years, except that Mālik says up to a month beyond that. When breast milk is mixed with food, it does not create the prohibition, whether or not the milk is predominant. Mālik says that milk mixed with water does, unless the milk disappears, in which case it does not. Ash-Shāfi'ī and Aḥmad say that the prohibition through milk mixed with food and drink is brought about if the child has it five times.

Chapter Eighteen

Maintenance

The Imams agree that maintenance is mandatory for a wife, parent and small child. They disagree about whether maintenance for wives is determined by the *Shari'a* or by the circumstances of the couple. Abū Ḥanīfa, Mālik and Aḥmad say that the circumstances of the couple are considered, and so a wealthy man pays maintenance based on his wealth and a poor man pays the minimum. A wealthy man must give a poor woman a medium maintenance and a poor man must give a wealthy woman the minimum and he is liable for the rest. Ash-Shāfi'ī says that maintenance is determined by the *Shari'a* and only the circumstances of the husband are considered. They agree that if a wife needs a servant, one must be provided. They disagree about a woman who needs more than one servant. Three say that he only has to provide one servant while Mālik says that if she needs two or three, he has to provide them.

Lack of maintenance: If a husband is unable to support and clothe his wife, can she have the marriage annulled? Abū Ḥanīfa says that she has no automatic right of annulment, but he allows her to earn. The other three say that she has the right of annulment if her husband is unable to provide for, clothe and house her. If a period of time passes in which he does not support his wife, does he owe back maintenance or is it cancelled? Abū Ḥanīfa say that it is cancelled unless there is a ruling from a judge or they agree on a stipulated amount and it becomes a debt. The other three say that the maintenance of a wife is not cancelled with time, but becomes a debt.

Maintenance exceptions: They disagree about whether a rebellious wife is or is not entitled to maintenance. They disagree about what happens when a wife travels with her husband's permission for something which is not mandatory. Abū Ḥanīfa says that he does not have to provide for her, while the other three say that he does.

Maintenance for divorced nursing mothers: If a finally divorced woman asks for a suitable wage for suckling her child, is she more entitled than others? Abū Ḥanīfa says that if there is someone who will do it for free or for a lower price, then the father can ask someone else to suckle him, provided that it takes place with the mother because she has custody. Mālik has two statements, one of which is that the mother is more entitled and the second like that of Abū Ḥanīfa. Ash-Shāfi'ī has two positions: one, which is also Aḥmad's, is that the mother is more entitled in every instance, and even if there is a woman who is skilled in nursing, he is still compelled to give the child to its mother for a suitable fee. The second is like that of Abū Ḥanīfa. They agree that the mother must nurse the child immediately after birth. As to whether she can be compelled to nurse him after that initial nursing, three say that she cannot if there is someone else available. Mālik says that while she is married to the father of the child, she is compelled, unless someone of her social standing does not do so, or because she is ill, or her milk bad.

Maintenance by heirs: They disagree about whether an heir is compelled to support those from whom he inherits by fixed shares or paternal kinship. Abū Ḥanīfa says that he is compelled to provide for every relative who is a *mahram*, including maternal and paternal aunts. Cousins are excluded, as well as those connected by suckling. Mālik says that he is only obliged to support parents and children. Ash-Shāfi'ī says that he is obliged to support his father, grandfather, son, and grandson. Aḥmad says that every two people between whom there is inheritance must support one another, like parents, and sons of brothers and sisters.

Maintenance of adult offspring: They disagree about maintenance of a child who becomes an adult but has no livelihood. Abū Ḥanīfa says that when a boy becomes adult, his support is cancelled, but the support of a girl does not stop until she marries. Mālik says the same but says that the girl should be supported until her marriage is consummated. Ash-Shāfi'ī says her maintenance stops altogether as soon as she marries. Aḥmad says that the maintenance of a son is not cancelled for his father, even when he becomes an adult, if he has no money or way of earning. When a son becomes an adult but

is ill, it is agreed that his maintenance continues. If he recovers and then becomes ill again, all except Mālik say that his maintenance resumes. If a girl marries and her marriage is consummated and then she is divorced, Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad say that the maintenance is resumed by the father, but Mālik says it is not.

Precedence in maintenance: When there are several heirs, like a child and a grandfather, or a son and a daughter, or a daughter and a grandson, or a mother and a daughter, who has the priority to be provided for? Abū Ḥanīfa and Aḥmad say that a child comes before a mother and grandfather, who share, which is also the case with a daughter and son. In the case of a daughter and grandson, Abū Ḥanīfa says that the daughter comes before the grandson. Aḥmad says that it is in halves. In the case of a mother and daughter, Abū Ḥanīfa and Aḥmad say that a quarter goes to the mother and the rest to the daughter. Ash-Shāfi'ī says that the only males entitled to maintenance are grandfathers, sons and grandsons by sons.

Maintenance of animals: If someone has an animal he cannot provide for, can the judge force him to sell it or not? Abū Ḥanīfa says that the judge commands him by way of commanding the correct and forbidding the bad without compulsion. The other three say that the judge can compel the owner to maintain it or sell it. Mālik and Aḥmad add that he is prevented from making it carry what is too heavy for it.

Custody

They agree that the right of custody is confirmed for the mother, as long as she does not re-marry. If she marries and the marriage is consummated, then she does not have custody. They disagree about whether custody reverts to the mother if she is divorced with a final divorce. All except Mālik says that it does. They disagree about what happens when a couple with a child separate. Abū Ḥanīfa says, in one of two views, that the mother is more entitled to have custody of a son until he can eat, drink, dress himself, wash and clean himself after the lavatory, and then the father is entitled to his custody. The mother is entitled to have custody of a daughter until she reach-

es puberty. Neither boy or girl is given a choice. Mālik says that a mother is entitled to have custody of a daughter until she marries and the marriage is consummated, and of a son until he is an adult. Ash-Shāfi'ī says that a mother is entitled to have custody of both up to the age of seven and they are then given a choice. Aḥmad has two reports, one that the mother has custody of a boy until seven and then he is given a choice, and a girl remains with the mother. The other view is like that of Abū Ḥanīfa.

Custody by sisters and other female relatives: They disagree about a full sister and whether she is more entitled than a sister by the father. Abū Ḥanīfa says that a full sister is more entitled and that a maternal aunt is more entitled than a sister by the father in one view, and in the second, the reverse. Mālik says that a maternal aunt is more entitled. A sister by the mother is more entitled than a sister by the father. Ash-Shāfi'ī and Aḥmad say that a sister by the father is more entitled than a sister by the mother or a maternal aunt.

Custody in the event of moving to another place: If the mother of a child has custody and the father wants to travel with his child with the intention of settling in another land, can he take the child from her? Abū Ḥanīfa says that he cannot do that while the other three say that he can. If the wife is the one who is moving with the child, Abū Ḥanīfa says that she can move on two conditions: that she moves to her own land and that the marriage contract took place in the land to which she is travelling. If either condition is lacking, then she is prevented from going, except to a place near enough to come and go in a night. If she moves outside *Dār al-Islām* or from a city to a *wadi*, even if it is near, she is prevented. The other three say that a father is more entitled to have custody of the child, whether he or she moves. Another view from Aḥmad is that the mother is more entitled to have custody.

Chapter Nineteen

Crimes Involving Injury

The four Imams agree that a killer will not be in the fire forever and that his repentance from the act of killing is valid. They agree that if someone kills a Muslim and the victim is not the killer's son, and it was deliberate, retaliation is obliged. They agree that if an unbeliever kills a Muslim, he should be killed. They disagree about what happens if a Muslim kills a *dhimmī* or someone with whom there is a treaty. Ash-Shāfi'ī and Aḥmad say that he is not killed. Mālik says this also, except if he kills a *dhimmī* or someone with a treaty or safe conduct treacherously: in which case no relative is permitted to pardon him because the murder is a matter of the jurisdiction of the ruler. Abū Ḥanīfa says that a Muslim should be killed for the murder of a *dhimmī*, but not of someone with a safe conduct. They agree that a slave should be killed for the murder of a free man but disagree about a free man who kills a slave. Mālik, ash-Shāfi'ī and Aḥmad say that he is not killed, but Abū Ḥanīfa says that he is.

Killing parents or children: They agree that if a son kills one of his parents, he is killed for it. They disagree about when a father who kills his son. All except Mālik say that he is not killed. Mālik says that he is if it was intentional and deliberate murder. If he strikes him with a sword without intending to kill him, he is not killed. A grandfather is the same as a father in that respect.

Women killing men and vice versa: They agree that a woman is killed for the murder of a man and a man for a woman. They disagree about whether there is retaliation between man and woman in respect of anything less than homicide. All but Abū Ḥanīfa say that there is, while he says that there is not.

Killing by a group: If a group participate in killing one person, Abū Ḥanīfa, Mālik and ash-Shāfi'ī say that the whole group are killed, except that Mālik makes the *qasāma* (see page 181) an exception to that. He says that only one is killed by *qasāma*. Two

things are reported from Aḥmad. One is like the statement of the majority and the other is that a group should not all be killed for the murder of one person and that blood money is obliged rather than retaliation. Mālik, ash-Shāfi'ī and Aḥmad say that the hands of all the group are cut off for the hand of the victim. Abū Ḥanīfa says that they are not cut off but that the blood money is taken equally from those who severed the hand.

Death from injury: They agree that if a man is injured by another deliberately, and remains bed-ridden until he dies, there is retaliation on his behalf.

Death by a heavy blow: They disagree about when someone is killed by something heavy, like a large piece of wood or stone, which would generally kill a person. All except Abū Ḥanīfa say that retaliation is necessary for that, and there is no difference between battering with a stone or staff, drowning in water, burning with fire, strangling, collapsing a house on someone, or denying him food and drink until he dies. Abū Yūsuf and ash-Shaybānī agree with this but Abū Ḥanīfa says that retaliation is mandatory for killing by fire or with sharp steel, wood or stone, but that for drowning or killing with a blunt stone or wood, there is no retaliation. Ash-Shāfi'ī says that there is only retaliation for metal. If someone hits another and the place turns black, or he breaks a bone, Abū Ḥanīfa has two positions about that.

Manslaughter: They disagree about manslaughter, which is when someone intends to hurt another but exceeds his intention, killing with a blow which was not intended to be fatal. There is blood money for that rather than retaliation, according to Abū Ḥanīfa and ash-Shāfi'ī. If he goes on hitting him until he dies, then there is retaliation. Mālik says that retaliation is obliged in that case.

Killing by coercion: They disagree about when one man forces another man to kill someone. Abū Ḥanīfa says that the one who did the forcing is killed, but not the one who was forced. Mālik and Aḥmad say that the one who was forced is killed. Ash-Shāfi'ī says in one statement that the forcer is killed and in another that the forced is killed. The most likely is that they are both subject to retal-

iation. They disagree about the definition of someone forced. Mālik says that if the forcer is the ruler, conqueror, or master of a slave, they are both are subject to retaliation, unless the slave is an ignorant foreigner who does not know that it is forbidden. In such a case, there is no retaliation taken from him. The others say that forcing applies to any aggressor. They disagree about when a man holds someone so that another can kill him. Abū Ḥanīfa and ash-Shāfi'ī say that there is retaliation against the killer rather than the holder. They do not oblige anything but discipline against the holder. Mālik says that they both share in the killing and so retaliation is obliged on them since the killer would not have been able to kill the victim if he had not helped him. Aḥmad says in one view that the killer is killed and the holder imprisoned until he dies, and in another that they are both killed.

Criminal homicide: They disagree about the punishment for criminal homicide and whether it is specified or not. Abū Ḥanīfa and Mālik in one transmission say that it is specified, and it is retaliation, and he has another position in which he says that there is a choice between retaliation and blood money. Ash-Shāfi'ī has two positions: the first, that it is not specified which of the two is obliged, and the second, which is sound, is that retaliation is specified but he can take blood money instead, even if the criminal does not agree. There are two positions from Aḥmad. The result is that if he pardons completely, there is no blood money. If he forgoes retaliation, then he can take blood money without the criminal's consent. Abū Ḥanīfa says that he can only take blood money in this case when the criminal agrees. Ash-Shāfi'ī and Aḥmad say that he has the right to take the blood money absolutely, and Mālik has two positions.

Pardon by relatives: They agree that if a man is pardoned by a male relative of his victim, there is no retaliation and the matter moves to blood money. They disagree about if it is a female who pardons. Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad say that there is no retaliation. There are different positions from Mālik. It is transmitted from him that women play no role in respect to blood crimes, and it is also transmitted that they have the same role as men if there are

no paternal relatives. So they are included in two transmissions: one is in retaliation but not pardon, and the other in pardon but not retaliation.

Time of retaliation: They agree that if relatives entitled to demand retaliation are present and ask for retaliation, the retaliation is not deferred unless the criminal is a pregnant woman, when it is deferred until she gives birth. If those entitled to demand retaliation are minors or absent, the retaliation is delayed, except according to Abū Ḥanīfa who says that if the children have a father, who can seek the retaliation, it is not deferred. If those entitled are absent, minors or insane, the Imams agree that retaliation is deferred, when those entitled are absent, but disagree about minors and the insane. Abū Ḥanīfa and Mālik say that retaliation is not deferred for them. Ash-Shāfi'ī says that retaliation is deferred until a madman recovers and a minor becomes an adult. Aḥmad has two reports, the most evident being that it is deferred.

Mass murder: They disagree about someone who kills a group of people. Abū Ḥanīfa and Mālik say that there is only one retaliation for the whole group and nothing more against him. Ash-Shāfi'ī says if he kills one after another, he is killed for the first and the rest have blood money. If he kills them all at once, lots are drawn between the relatives of the victims. He is killed for the one whose lot is drawn and the rest have blood money. Aḥmad says that if someone kills a group and the relatives are on hand and demand retaliation, he is killed for all and owes no blood money. If some ask for retaliation and some for blood money, he is killed for those who have demanded retaliation and blood money is obliged for those who have asked for it. If they all demand blood money, each of the claimants receives full blood money.

Injuring more than one victim: If a man inflicts an injury on someone and cuts off his right hand and then on another man and cuts off his right hand as well, and they both demand retaliation from him, Abū Ḥanīfa says that his right hand is cut for one and blood money is taken from him for the other. Mālik says that his right hand is cut for both victims and he owes no blood money. Ash-

Shāfi'ī says that his right hand is cut off for the first and he owes blood money for the second. If he cuts off their hands together, lots are drawn, as is the case in killing. It is the same when the matter is unclear. Aḥmad says that if they request retaliation, his hand is cut for them and there is no blood money. If one of them asks for retaliation and the other for blood money, the hand is cut off for the one who has demanded retaliation and the blood money taken for the other.

Judicial injuries: They agree that if the ruler cuts off the hand of a thief and the wound proves fatal, he is not liable for it. They disagree about when he cuts off his hand for retaliation and the wound proves fatal. All except Abū Ḥanīfa say that he is not liable for that, while Abū Ḥanīfa says he is liable for it and the relatives of the one who took retaliation bear the cost. If the relative of a murder victim cuts off the hand of the killer, Abū Ḥanīfa says that if the relative has pardoned him, he is liable for the blood money for the hand. If he did not pardon, he does not owe anything. Mālik says that his hand is cut off in any case, whether the relative pardoned or not. Ash-Shāfi'ī says that there is no liability for the cutter nor any retaliation, whether the guardian pardons or does not. Aḥmad says that he is obliged to pay the blood money for the hand.

Various matters concerning retaliation: They agree that a sound hand may not be cut off for a withered one or a right hand for a left hand or a left for a right. They disagree about whether the full retaliation should be taken before or after the original wound has healed. Three say that it should not be taken until after it has healed, and ash-Shāfi'ī says that it should be taken in full in any case. They disagree about someone who demands full retaliation for a wound when it was inflicted with a particular implement. Abū Ḥanīfa says that retaliation may only be taken with a sword, whether someone was killed by it or something else. Mālik and ash-Shāfi'ī say that a killer should be killed by the like of what he killed with. Aḥmad has two versions. They agree that someone who kills in the *Haram* can be killed in it. They disagree about someone who kills outside the *Haram* and then takes sanctuary in it, or someone obliged to be

killed for disbelief, fornication or apostasy who takes refuge in the *Haram*. Abū Ḥanīfa and Aḥmad say that he is not killed in it, but is boycotted and cannot buy or sell until he leaves and then he is killed. Mālik and ash-Shāfi'ī say that he is killed in the *Haram*.

Chapter Twenty

Blood Money

The Imams agree that the blood money of a free male Muslim is one hundred camels taken from the property of a deliberate killer if blood money is accepted. Then they disagree about whether it is immediate or deferred. Three Imams say it is immediate, while Abū Ḥanīfa says that it can be paid over three years.

Form of blood money for a life: They disagree about whether dinars and dirhams can be taken as blood money or not. Abū Ḥanīfa and Aḥmad say that it is permitted to take them as blood money when camels are available, and then there are two opinions about whether gold and silver actually form the basis of the blood money or whether they are a substitute for the value of the camels. Mālik says that they are the basis itself, determined by the *shari'a*, and he does not consider them in terms of the value of camels. Ash-Shāfi'ī says that blood money cannot be paid in other than camels when they exist except by mutual consent. If there are no camels, then there are two positions reported from him: the new is that their price must be paid when blood money is taken, whatever it is, and the old is that in case of necessity it is one thousand dinars or twelve thousand dirhams. They disagree about the amount of the blood money in dirhams. Abū Ḥanīfa says that it is ten thousand dirhams. The other three say that it is twelve thousand dirhams. They disagree about whether cattle, sheep and clothing can act as blood money or can be taken by way of value. Abū Ḥanīfa, Mālik and ash-Shāfi'ī say that they cannot act as blood money, but can be taken by mutual consent, according to value. Aḥmad says that cattle and sheep have determined amounts in terms of blood money, which is one hundred cattle and one thousand sheep. There are varying transmissions about clothing.

Blood money for wounds where no retaliation is possible: The Imams agree that there is retaliation in respect of all wounds for

which retaliation is possible. Those for which there is no retaliation are ten: a head wound which splits the skin, a head wound which bleeds, a head wound which splits the flesh, a deep head wound, and that which leaves a thin skin between it and the skull. These are five for which there is no determined legal amount agreed on by the four. They agree that each of these five is subject to judgement after it heals. The judgement is that the victim's value before and after the injury is assessed and the difference is what the indemnity is. As for the five for which there are prescribed amounts, the first is a wound which exposes the bone. If it is on the face, five camels are due with the three, or ten in one view by Aḥmad. Mālik says that there is judgement for such a wound on the nose and lower jawbone, but five camels for the rest of the face. If it is on the head, is that the same as the face? Three say that it is, while Aḥmad has two statements, one like the rest and the second that if it is on the face, there are ten camels for it, and if it is on the head, there are five. In the case of a wound in which the bone is crushed and broken, Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad say that there are ten camels, and transmissions from Mālik vary. One is five and judgement, and another is fifteen. For a wound which exposes, breaks and dislocates the bone there are fifteen camels. A head wound which reaches the brain receives a third of blood money. A wound which cuts internally, like into the abdomen, chest, or side receives a third of blood money.

Blood money for wounds where retaliation is possible: They agree that there is an eye for an eye, a nose for a nose, an ear for an ear and a tooth for a tooth and that there is full blood money for two eyes. There is full blood money if the nose is cut off, and there is full blood-money for the tongue, for both lips, and for all the teeth, which are thirty-two. For every tooth there is five camels and there is full blood money for both jawbones. There is half for each jawbone. There is full blood money for both ears according to three Imams, while there are two versions from Mālik, one like the others and the second that the matter is taken to judgement. They agree that there is full blood money for four eyelids: each is worth a quarter, but Mālik says that there is judgement in that. They disagree about a sightless eye, a withered hand, a paralysed penis, the penis of a eunuch, the tongue of a mute, the extra rib and a black tooth. Abū

Ḥanīfa, Mālik and ash-Shāfi'ī say that there is judgement, and there are two reports from Aḥmad, the most likely being that there is blood money for them and the other is like the rest.

Various further details about blood money: They disagree about collarbone, rib, arm, wrist, and thigh. Abū Ḥanīfa, Mālik and ash-Shāfi'ī say that there is judgement in respect of them. Aḥmad says there is a camel for a rib, a camel for a collarbone, two camels for each of the arms and thigh bones, and there are four for both wrists. They disagree about when a broken tooth is knocked out. Abū Ḥanīfa and Aḥmad say that there is no liability for it. Mālik says that it is mandatory and is not cancelled if it is put back. Ash-Shāfi'ī has two positions, the sounder of which is that it is mandatory. If someone hits a man's tooth and it turns black, Abū Ḥanīfa, Mālik, and Aḥmad in one statement say that the money for a tooth is mandatory, which is five camels. Mālik says that if a black tooth falls out later, then another blood money is necessary. Ash-Shāfi'ī say that there is only judgement in respect of that. If a blind eye is gouged out, Mālik and Aḥmad say that full blood money must be paid. Abū Ḥanīfa and ash-Shāfi'ī say that it is half. If a one-eyed person has his sound eye gouged out deliberately, Abū Ḥanīfa and ash-Shāfi'ī say that retaliation is obliged. If he is pardoned, then he owes half of his blood money. Mālik says that there is no retaliation. Does he have full or half blood money? There are two positions concerning that. Aḥmad says that there is no retaliation, but there is full blood money. There is full blood money for the hands and half for one of them. It is same with the feet. They agree about there being full blood money for the tongue and the penis. Mental impairment requires full blood money, as does loss of hearing. If one man hits another and removes the hair of his beard, head, eyebrows or eyelashes and it does not grow back, Abū Ḥanīfa and Aḥmad say that there is blood money for that, while the other two say that there is judgement.

Blood money with respect to men and women: They agree that the blood money of a free Muslim woman is half that of a free Muslim man. Then they disagree about equality in respect of other injuries. Abū Ḥanīfa and ash-Shāfi'ī in the new school say that they

are not equal in respect of any injury. The wound of a woman is worth half that of a man, great or small. Mālik, ash-Shāfi'ī in the old school and Aḥmad in one of two positions say that men and women are equal in respect of any wound which is less than a third of the blood money. When it reaches a third, then the blood money for a woman's injury is half that of a man.

Blood money for non-Muslims: They disagree about the blood money for a *Kitābī*. Abū Ḥanīfa says that it is the same as that of a Muslim with no difference. Mālik says that it is half that of a Muslim, whether the injury is deliberate or accidental. Ash-Shāfi'ī says that it is a third in both deliberate and accidental cases. Aḥmad says that if the *Kitābī* has a treaty and a Muslim kills him deliberately, then his blood money is the same as that of a Muslim. If it is by accident, there are two positions. One is half that of a Muslim and the second is a third. They disagree about the blood money of *Kitābī* and Magian women. Abū Ḥanīfa, Mālik and ash-Shāfi'ī say that they have half of that of their men and Aḥmad says half in accidental cases and that they are the same as men in cases of murder.

Cases of collision: If two riders collide and die, Mālik and Aḥmad say that the relatives of each of them owes the blood money of the other. The positions reported from Abū Ḥanīfa vary. One view is the same as Mālik and Aḥmad, and the other is that the relatives of each owe half to the other, which is the position of ash-Shāfi'ī. There is another position of his which is that if both of them and both animals die, there is nothing since it is like a natural disaster.

Accidental killing: They agree that the blood money for accidental killing is due from the relatives of the offender, and that they must pay it within three years. They disagree about whether the offender pays it with them. Abū Ḥanīfa says that he is like one of them and is obliged as they are. The Mālikīs disagree. Ibn Qāsim says what Abū Ḥanīfa says, while others say that the offender is not included with the relatives. Ash-Shāfi'ī says that if the relatives have enough to cover the blood money, the offender is not obliged to pay anything. Otherwise he is. Aḥmad says that he is not obliged to pay anything, whether they have enough or not. When they do not have enough,

the burden of the rest of the blood money is transferred to the treasury.

Sharing responsibility for blood money: They disagree about how the burden of the blood money is spread between relatives. Is it determined or is it according to ability to pay? Abū Ḥanīfa says that it is shared equally between all of them. Aḥmad and Mālik say that there is nothing determined about it, but that it should be dealt with according to what is easy and not injurious. Ash-Shāfi'ī says that it is determined: half a dinar for the wealthy, a quarter of a dinar for the average. Are poor and rich relatives equal in bearing the burden of the blood money? Abū Ḥanīfa says that they are equal. The other three say that the wealthy should pay more than the average. Does an absent relative have to bear any of the blood money like those present? Abū Ḥanīfa and Aḥmad say that they are the same, while Mālik says that an absent relative does not bear anything when he is in a different region from where the rest of the relatives are.

Order of liability for blood money: They disagree about the order of being liable for blood money. Abū Ḥanīfa says that the immediate and distant are the same. Ash-Shāfi'ī and Aḥmad say that the order is according to the closest paternal relatives. If they take care of it, it is not divided among others. If the immediate relatives do not have enough to cover it, then the more distant relatives are included. It is like that until it reaches the furthest of them in the degrees of inheritance.

Causing a miscarriage: If someone strikes the abdomen of a woman and she aborts a dead foetus and then she dies, Abū Ḥanīfa and Mālik say that there is no liability for the foetus but full blood money for the woman he struck. Ash-Shāfi'ī and Aḥmad say that there is full money for her and a tenth for the foetus.

Various statements about liability: If someone digs a well in the courtyard of his house, Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad say that he is liable for what falls into it and dies. Mālik says that there is no liability for it. If he spreads a mat in the mosque, digs a well for his use, or puts a candle in the mosque and causes a person's death by doing that, Abū Ḥanīfa says that if the neighbours gave no permis-

sion for it, he is liable. There are two statements from ash-Shāfi'ī about liability or lack of it, and two from Aḥmad, the more likely being that there is no liability. Ash-Shāfi'ī says that if someone spreads pebbles somewhere and a man slips on them, he is not liable. If he leaves a fierce dog in his house, and a man enters the house knowing that there is a fierce dog and it bites him, Abū Ḥanīfa and ash-Shāfi'ī say that there is no liability. Mālik says that there is liability provided that the owner of the house knew that it was fierce. There are two statements from Aḥmad, the more likely being that there is no liability.

Qasāma (sworn oath)

The Imams agree that *qasāma* is prescribed in killing when a corpse is found and the killer is not known. Then they disagree about what brings about the need for *qasāma*. Abū Ḥanīfa says that *qasāma* is obliged by finding a corpse in a place which is under the care or protection of people, like a quarter, a house, a mosque of a quarter or village. When that happens its people have to do *qasāma*. However a corpse for which *qasāma* is prescribed must be one which has the signs of a wound, blow or strangulation. Ash-Shāfi'ī says that *qasāma* is necessitated by strong suspicion. He says that there must be circumstances which support the claim, such as when a corpse is found in a quarter or small village and there is clear enmity between the victim and them. He considers the testimony of someone reputable to constitute strong suspicion. He also considers a cause of strong suspicion to be general and individual gossip that so-and-so killed so-and-so. Another instance is someone holding a blood-stained weapon where the corpse is. Another case is when people are found gathered together in a place or at a door where a murder victim is found. Aḥmad says that there is no *qasāma* until there is suspicious circumstances between victim and suspect. The transmissions from him about what constitutes strong suspicion vary. He mentions clear enmity and tribal kinship, as there is between tribes who seek blood revenge, and as there is between the people of rebellion and people of justice. This is the general statement of his companions. As for the claim of the victim when he

claims, before dying, that someone has killed him, that only constitutes strong evidence with Mālik.

The method of doing *qasāma*: When *qasāma* is necessary, it is agreed that those who accuse the killer must swear fifty oaths and they are entitled to his blood if the killing was intentional, according to Mālik and Aḥmad, and the old school of ash-Shāfi'ī. In the new school he says they are entitled to blood money. They disagree about whether one begins in *qasāma* with the oaths of the accusers or the accused. Ash-Shāfi'ī and Aḥmad say that the oaths of the accusers come first. If they refuse to swear and there is no evidence, then the accused swears fifty oaths and is free. Mālik says that one begins with the oaths of the accused but disagrees about the ruling if they refuse. One view is that the murder charge fails and there is no *qasāma*, and in another view, the accused swears and is considered innocent. If he refuses, he must pay the blood money from his property and his relatives are not obliged to pay any of it because his refusal is like an admission and the relatives are not responsible in case of admission. Abū Ḥanīfa says that the oath in the *qasāma* is only prescribed for the accused, and if the accusers do not specify a person against whom the accusation is made, fifty of the people under suspicion swear fifty oaths by Allah that they did not kill and do not know who the killer is. If there are not fifty, the oath is repeated. If the oaths are made, blood money is obliged from the inhabitants of the people of the quarter and their relatives. If a killer is named, there is no *qasāma*, and the specification of the killer frees the rest of the people. If the defendant swears an oath by Allah that he did not kill, then he is left.

The *Kaffāra* for Homicide

The Imams agree that *kaffāra* is obliged in cases of accidental killing when the victim is not a *dhimmī* or a slave. They disagree about what happens if the victim is a *dhimmī* or slave. Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad say that *kaffāra* is obliged for killing a *dhimmī*. Mālik says that there is no *kaffāra* for killing a *dhimmī*. If an unbeliever kills a Muslim accidentally, ash-Shāfi'ī and Aḥmad

say that he owes *kaffāra* for him, while Abū Ḥanīfa and Mālik say that there is no *kaffāra* for him. Is *kaffāra* obliged on the part of a child or mad person when they kill? All except Abū Ḥanīfa say that it is obliged. Abū Ḥanīfa says that it is not.

***Kaffāra* for accidental killing:** They agree that the *kaffāra* for accidental killing is to free a believing slave. If that is not possible, then it is fasting for two consecutive months. Then they disagree about feeding. Abū Ḥanīfa, Mālik, and Aḥmad in one view say that feeding is not adequate. Another position of Aḥmad says that it satisfies it. Ash-Shāfi'ī has two statements concerning that, the sounder of which is that there is no feeding.

The judgement on sorcery and sorcerers

Sorcery consists of charms and knots which affect people's bodies and hearts so that they become ill, or it kills them, or it alienates a man from his wife. Three Imams consider it to be real, while Abū Ḥanīfa says that it has no reality or physical effect. They disagree about the penalty for learning and teaching magic. Abū Ḥanīfa, Mālik and Aḥmad say that it constitutes disbelief. Some Hanafis say that if someone learns it in order to avoid it or to gain protection from it, that does not constitute disbelief. If he learns it in the belief that it is permitted or that it will be effective, that does constitute disbelief. If he believes that the *shayṭāns* do what the sorcerer wants, he is an unbeliever. Ash-Shāfi'ī says that if someone learns magic, he should be asked to describe his magic. If he describes something which entails disbelief, like what the Babylonians believed about astrology having an effect, then he is an unbeliever. If he believes that sorcery is permitted, he is an unbeliever.

Punishment of a sorcerer: Is a sorcerer killed for merely learning and using sorcery? Mālik and Aḥmad say that he should be killed just for that. Abū Ḥanīfa says that he should not be killed for his sorcery unless he repeats it. It is reported from him that he cannot be killed unless he confesses to killing someone by his sorcery. Is he

killed as retaliation or a *ḥadd*? Three say that it is a *ḥadd* while ash-Shāfi'ī says that it is retaliation.

Repentance of sorcerers: Is the repentance of a sorcerer accepted? Abū Ḥanīfa in the well-known position and Mālik say that his repentance is not accepted. He is killed as a heretic (*ẓindīq*). Ash-Shāfi'ī says that his repentance is accepted. Aḥmad has two positions, the more likely being that it is not accepted.

Sorceresses: Is the judgement of a Muslim sorceress the same as a man? Three say that it is the same while Abū Ḥanīfa says that she is imprisoned and not killed.

Opinions of scholars: An-Nawawī stated that going to soothsayers, learning soothsaying, astrology, casting with sand, and sleight of hand and teaching it is unlawful. Ibn Quddāma says that a soothsayer is someone who has a vision from the jinn. Aḥmad says that he is killed or imprisoned until he dies.

Chapter Twenty-One

The *Ḥadd* Punishments

There are seven crimes which incur *ḥadd* punishments. They are apostasy, rebellion, fornication, slander, theft, highway robbery and wine drinking.

Apostasy

Apostasy is to leave Islam by word, deed or intention. The Imams agree that anyone who apostatises from Islam must be killed.

Repentance from apostasy: They disagree about whether an apostate should be killed immediately or whether there is a delay to ask him to repent. Is it mandatory or recommended to ask him to repent? If he is asked to repent and does not, is there a delay or not? Abū Ḥanīfa says that it is not mandatory to ask him to repent and he is killed immediately, unless he asks for a delay and then he is given one for three days. Some Hanafis say that there is delay, and if he does not ask for a delay, it is recommended. Mālik says that he must be asked to repent. If he repents immediately, that is accepted. If he does not repent, he is given a delay for three days to repent. If he does not, he is killed. Ash-Shāfi'ī has two positions about whether it is mandatory for him to be asked to be repent, the more likely one being that it is mandatory. There are two statements about delay, the more likely being that there is no delay, even if he asks for it. He is killed immediately if he remains an apostate. There are two positions from Aḥmad, one is like that of Mālik and the other is that he does not have to be asked to repent. As for the delay, there are three positions in his school about whether it is mandatory.

Women apostates: As to whether the judgement regarding a woman apostate is the same as that for a man, they say that men and women are the same in respect of apostasy. Ash-Shāfi'ī says that the

apostasy of a child does not count and the same is reported from Aḥmad.

Zindīqs: They agree that a *zindīq*, who is someone who conceals disbelief while making a show of Islam, is killed. Then they disagree about accepting his repentance. Abū Ḥanīfa and ash-Shāfi'ī say that it is not accepted, while Mālik and Aḥmad say that he is killed without being asked to repent. The same is also reported from Abū Ḥanīfa.

Apostasy en masse: If the people of a whole land apostatise, does that land become *Dār al-Ḥarb* or not? Abū Ḥanīfa says that *Dār al-Islām* cannot become *Dār al-Ḥarb* unless three conditions apply: the dominance of the laws of disbelief, that there is no Muslim or *dhimmī* with basic security there, and that it is adjacent to *Dar al-Ḥarb*. The clear school of Mālik is that when the laws of disbelief appear in a land it becomes *Dār al-Ḥarb*. That is also the position of ash-Shāfi'ī and Aḥmad. They agree that the property of such people can be looted. As for their children, Abū Ḥanīfa and Mālik say that those who were young at the time of the apostasy are not enslaved, but adjudged to be Muslims when they are adult. If they are not Muslim, Abū Ḥanīfa and Mālik say that they should be imprisoned and beaten to bring them to Islam. As for their grandchildren, they should be enslaved. Aḥmad says that both their children and grandchildren should be enslaved. Ash-Shāfi'ī has two statements, the sounder being that they are not enslaved.

Rebellion

The Imams agree that having a ruler is an obligation and that the Muslims must have a ruler to establish the practices of the *dīn* and to give justice to the wronged from those who have wronged them, and that it is not permitted for there to be two rulers over the Muslims at the same time in the world, whether or not they are separate from each other or in agreement, and that the rulers must be from any branch of Quraysh. The ruler can appoint his successor and there is no disagreement that Abū Bakr was permitted to do that. It is not

permitted for the ruler to be a woman, unbeliever, a child who has not reached puberty or a madman. The ruler must be obeyed in respect of all that he commands as long as that does not entail disobedience to Allah, and fighting under him is an obligation, and the judgements of those he appoints must be carried out.

If an armed group rebel against the Muslim ruler, it is permitted to fight them until they return to the command of Allah. If they return, they are left. They agree that whatever land tax or *jizya* the rebels have taken must be taken into account by the people of justice and that there is no liability for property of the rebels which the people of justice destroy. They disagree about the property and lives of the people of justice which the rebels destroy during the fighting. Abū Ḥanīfa, Mālik, ash-Shāfi'ī in the new school, and Aḥmad in one statement say that there is no liability while in the old school ash-Shāfi'ī and one position of Aḥmad they are liable.

Fornication

The Imams agree that fornication is an immense outrage which incurs a *ḥadd* punishment. The punishment varies with different fornicators because sometimes the fornicator may be a virgin and sometimes a non-virgin, or *muḥṣan*. They agree that the preconditions for being *muḥṣan* are freedom, adulthood and sanity, and that the man or woman has been in a valid marriage which has been consummated. These preconditions are agreed upon. They disagree about whether Islam is a precondition or not. Abū Ḥanīfa and Mālik say it is, while ash-Shāfi'ī and Aḥmad say that the *ḥadd* is not inflicted on a *dhimmī*. If a man meets all the preconditions and fornicates with a woman who also meets the preconditions, both of them are stoned to death by consensus. Are they flogged first? Three say not and that the obligation is only stoning, whereas there is one position from Aḥmad that both punishments are inflicted.

Fornication by two virgins: They agree that if two virgins fornicate, they are each flogged with a hundred lashes. Should they be exiled as well? Abū Ḥanīfa says that they should not and that exile is not mandatory. If the ruler thinks it is good, he can exile them for

a time. Mālik says that it is mandatory to exile a free virgin male fornicator but not a woman. Exile is for a year to another land. Ash-Shāfi'ī and Aḥmad say that they should both be flogged and exiled for a year.

Fornication when one is *muḥṣan* and one not: They disagree about when one of the perpetrators meets the preconditions of being *muḥṣan* but not the other, such as when a Muslim man has intercourse with a *Kitābī* woman or a sane man has intercourse with a mad woman or an adult has intercourse with a child. Abū Ḥanīfa and Aḥmad say that neither of them are *muḥṣan*. Mālik and ash-Shāfi'ī say that the *ḥadd* is incurred by the one who meets the preconditions.

Various possible situations: If a sane woman gives herself to a madman who has intercourse with her or a sane man has intercourse with a madwoman, three say that the *ḥadd* is obliged on the sane person, and Abū Ḥanīfa says that the *ḥadd* is obliged on a sane man but not a sane woman. If someone finds a woman in his bed and thinks it is his wife and has intercourse with her, or a blind man calls his wife and a woman comes to him and he has intercourse with her thinking it is his wife and then the truth becomes clear, three say that there is no *ḥadd* on the deluded person or blind man, whereas Abū Ḥanīfa says that there is.

What is necessary to establish fornication: The Imams agree that the evidence necessary to establish fornication is the testimony of four reputable men who were witness to the actual act of fornication. They disagree about whether the number is a precondition in confession or not? Abū Ḥanīfa and Aḥmad say that fornication is not established by confession unless a sane adult man admits to it four times. Mālik and ash-Shāfi'ī say that it is established by one confession. If the four witnesses testify in different gatherings, three of the Imams say that if they do not testify in the same gathering, they are slanderers subject to the *ḥadd*, whereas ash-Shāfi'ī says that there is no harm in them being apart and their statements are accepted.

Retracted confessions to fornication: If someone confesses to adultery and then retracts it, his retraction is accepted and there is no *ḥadd* with three. The position of Mālik varies concerning that. It is said that his retraction is accepted, as is the case in theft and drinking, and it is also said that it is not retracted unless there is something doubtful about it.

Sodomy: They agree that sodomy is forbidden and that it is one of great enormities. Is the *ḥadd* obliged? Mālik, ash-Shāfi'ī and Aḥmad say that the *ḥadd* is imposed. Abū Ḥanīfa says that a man should be beaten the first time. If he repeats the act, he is killed. There is disagreement about what brings about this *ḥadd*. Mālik, ash-Shāfi'ī in one position, and Aḥmad in the most evident transmission say that it is stoning in every case, virgin or non-virgin. Ash-Shāfi'ī says in another view, which is the more probable, that it is the same as the *ḥadd* for fornication and so virgin and non-virgin are differentiated. One is stoned and the other flogged. Aḥmad says the same. They agree that the proof of sodomy is only established by four witnesses as in fornication, except for Abū Ḥanīfa who accepts two witnesses.

Bestiality: If someone commits bestiality, Abū Ḥanīfa and Mālik say that he should be beaten, and there is another version from Mālik that the *ḥadd* applies. Ash-Shāfi'ī has three positions, one is that there is a *ḥadd* which varies between virgin and non-virgin, the second is that he is killed in any case, and the third is that he is beaten, which is the preferred position. Aḥmad has two positions, and the preferred one is that he is beaten. They disagree about the animal in this case. Mālik says that it is not slaughtered. Abū Ḥanīfa says that if it belonged to the one who committed the action, it is slaughtered, but otherwise not. The Shāfi'ītes have three views: the soundest is that if it is an edible animal, it is slaughtered, otherwise not; the second is that it is slaughtered in any case; and the third is that it is not slaughtered in any case. Aḥmad says that it is slaughtered, whether it is his or someone else's, whether it is edible or not. The perpetrator must pay its price to the owner. Can he or others eat it? Abū Ḥanīfa says that he cannot eat it but others can. Mālik says that he and others can eat it. Aḥmad says no one can eat it. The

Shāfi'ites have two views, the sounder of which is that it is eaten since it is not forbidden.

Various rulings on witnessing fornication: They agree that if there are less than four witnesses to fornication, they are slanderers who receive the *ḥadd* for slander, except in one view of ash-Shāfi'ī. They agree that if two men say that someone fornicated with a woman who was willing and two say that she was unwilling, there is no *ḥadd* on any of the four. If two testify that someone committed fornication in one corner and two that it was in another corner, Abū Ḥanīfa and Aḥmad say that the testimony is accepted and the *ḥadd* is administered. Mālik and ash-Shāfi'ī say that it is not accepted and there is no *ḥadd*. Testimony on slander, fornication, and drinking wine is heard immediately. If time has passed since the event, Abū Ḥanīfa says that it is not heard after a long time if the delay was not due to distance from the judge. Three say that it is heard, even if he confesses to it after a time. Abū Ḥanīfa says that his confession is heard, except for drinking wine. Three say that his confession is heard in all cases.

Liability for wrong judgement: If a judge judges by testimony, and then it becomes clear to him that the witnesses were disreputable people, slaves, or unbelievers, Abū Ḥanīfa says that the judge is not liable for any ensuing injury. Mālik says that if there is clear evidence of their disreputability, the judge is not liable. If there is evidence of drinking and disbelief, then the judge is liable for his negligence in the matter. Ash-Shāfi'ī says that he is liable for what happens as a result of any beating inflicted. If a ruler mistakenly imposes a *ḥadd* punishment or retaliation, Abū Ḥanīfa says that restitution for the error of the ruler comes from the treasury. Ash-Shāfi'ī and Aḥmad also say that, although it is also reported from them that his relatives pay it. Mālik says that nothing is owed.

Sexual intercourse with a wife's slavegirl: The Imams agree that it is not permitted for a man to have intercourse with his wife's slavegirl, even if the wife gives permission. Is the *ḥadd* imposed for that if he knows that it is unlawful? Abū Ḥanīfa says that if he thinks that she is lawful, there is no *ḥadd*. If he knows the prohibition then

there is. Mālik and ash-Shāfi'ī says that the *ḥadd* is imposed. If he is a non-virgin, he is stoned. Aḥmad says that he is given a hundred lashes.

Rape claims: If a free woman becomes pregnant and has no husband and says that she was forced, Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad in his most evident transmission say that the *ḥadd* is not imposed on her. Mālik says that if she is resident and not foreign, she receives the *ḥadd* and her statement about rape is not accepted unless she made it clear afterwards by asking for help or something else which supports her allegation.

Slander

The Imams agree that if a free adult sane Muslim slanders a free, sane, adult, chaste Muslim man who has not been punished for fornication, or a free, sane, chaste Muslim woman not divorced in a *li'ān*, who has not been punished for fornication, and they are not in *Dār al-Ḥarb* and the person slandered seeks to have the *ḥadd* implemented, the slanderer receives eighty lashes and it cannot exceed that number. They agree that if a slanderer brings correct evidence for his allegation, the *ḥadd* is cancelled, and that if a slanderer does not repent, his testimony is not accepted.

Slandering several people in a group: They disagree about someone who slanders a group. Abū Ḥanīfa and Mālik in his best known tradition says that there is a *ḥadd* for each person slandered, even if he slandered them all with a single expression. Ash-Shāfi'ī has two statements, the most evident being that if he slanders them with one or more statements, several *ḥadd*s are imposed on him. There are two statements from Aḥmad, one supported by the old school of ash-Shāfi'ī, which is that if he slanders them in one statement, there are separate *ḥadd*s imposed on him, and the second is that if they seek it separately, there is a *ḥadd* for each of them.

Insinuation: Insinuation does not incur a *ḥadd*, according to Abū Ḥanīfa, even if slander was meant. Mālik says that the *ḥadd* is incurred in any case. Ash-Shāfi'ī says that if someone intended slan-

der and explains it, the *ḥadd* is incurred. Aḥmad has two reports, the more evident of which is that the *ḥadd* is incurred in any case, and the other is like the school of ash-Shāfi'ī.

Theft

The Imams disagree about the minimum which incurs the *ḥadd* for theft. Abū Ḥanīfa says that it is a dinar or ten dirhams or something of the value of either. Mālik and Aḥmad in his most likely position say that it is a quarter of a dinar or three dirhams or something of the value of three dirhams. Ash-Shāfi'ī says that it is a quarter of a dinar and other things. They agree that it is necessary that the theft was from a secure location before the hand is cut off, but they disagree about the definition of a secure location. Abū Ḥanīfa says that it applies to anything which secures property. The other three say that it varies with different types of property. Custom is considered in that. They disagree about amputation for the theft of something which is quick to spoil. Mālik, ash-Shāfi'ī and Aḥmad say that the hand is cut off if what is stolen is of the value for which the *ḥadd* is normally applied. Abū Ḥanīfa says that the hand is not amputated for such things, even if they reach the minimum value for which the *ḥadd* is normally applied. If someone steals dates hanging from a tree which is not protected, Abū Ḥanīfa, Mālik and ash-Shāfi'ī say that he owes the price and they agree that his hand is not amputated. Is the hand of someone who steals firewood amputated? Abū Ḥanīfa says not, even if its value reaches the minimum. Ash-Shāfi'ī, Mālik and Aḥmad say that it is amputated when its value reaches the minimum.

Group theft: The Imams agree that when a group participate in a theft and each of them receives the minimum which necessitates the *ḥadd* from the theft, each of them has his hand cut. If they share in stealing the minimum, Abū Ḥanīfa and ash-Shāfi'ī say that their hands are not amputated. Mālik says that if they need to help each other to carry what they have stolen, their hands are cut. If it is something they are each able to carry, the Mālikīs have two positions: the first is that if each person alone takes something, no one's

hand is cut off unless the value of what he took reaches the minimum; the second is that what he took is added to what the others took. Aḥmad says that their hands are cut whether it was heavy things which require help, like timber and the like, or light things, like clothing and the like, and whether they carry it out together from a secure place, or each of them takes some of it, provided the total reaches the minimum.

Theft by children: If a young child without discrimination steals, Abū Ḥanīfa and ash-Shāfi'ī say that his hand is not cut off. Mālik says that it is cut off, although some Mālikīs say that it is not. Aḥmad has two positions, the more evident of which is that it is not cut off.

Stealing the Qur'an: If someone steals a copy of the Qur'an, Abū Ḥanīfa and Aḥmad say that his hand is not cut off, while Mālik and ash-Shāfi'ī say that it is. In the case of a graverobber, all but Abū Ḥanīfa say that his hand is cut off.

Penalties for repeated theft: If someone steals once, his right hand is cut off. If he steals again his left foot is cut off. If he steals a third time, Abū Ḥanīfa and Aḥmad in one transmission say that more than one hand and foot are never amputated. He is imprisoned. The school of Mālik and ash-Shāfi'ī is that his left hand is cut off the third time, and the fourth time his right foot, which is another view from Aḥmad. They agree that if a thief must have his hand cut off and it is his first theft and he has sound limbs, one begins with his right hand at the wrist which is cleanly cut. The second time his left foot is cleanly cut off at the ankle. If he does not have the limb which must be amputated, the next limb is cut. They disagree about what happens if the cutter errs and cuts the left for the right. Abū Ḥanīfa and Mālik say that doing so is allowed. Ash-Shāfi'ī and Aḥmad say that the cutter owes blood money and there are two statements about repeating the amputation.

Confession of theft: Is the *ḥadd* for theft established by the confession of the thief? Three imams say that it is established by one confession while Aḥmad says that it is only established by two confessions, as is also the view of Abū Yūsuf.

Return of stolen goods: They agree that if a stolen item remains, it must be returned. Does a thief incur the *ḥadd* if he returns the stolen item? Abū Ḥanīfa says that if the person stolen from prefers to be reimbursed, then the thief's hand is not amputated. If he chooses amputation and it is done, then the thief is not liable for what was stolen. Mālik says that if the thief is wealthy, his hand is amputated and he is liable for what he stole. If he is poor, he is not pursued for its price, but his hand is cut off. Ash-Shāfi'ī and Aḥmad say that both penalties apply, and his hand is cut and he is responsible for the value.

Theft within the family: Is the hand of one of a married couple amputated for stealing the property of the other? Abū Ḥanīfa says it is not, whether the theft is from the private house of one of them or the shared house. Mālik says that the hand is cut off when one steals from the private house of the other. Mālik says that it is cut off if one of them steals from somewhere protected which is the private property of the one stolen from. When they steal from the house they both live in, it is not cut off. Ash-Shāfi'ī has various statements. One is the same as the school of Mālik, the second is that the hand of neither of them is ever amputated, and the third is that the hand of the husband only is cut off. Aḥmad has two positions: one is like the school of Mālik and the other is that the hand of neither is ever amputated. The Imams agree that the hands of parents cannot be amputated for anything they steal from the property of their children. They disagree about when a child steals from the property of his parents or one of them. Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad say it cannot be amputated. Mālik says that a child's hand is cut off for stealing from his parents when there is no ambiguity about it. Are relatives' hands cut off for stealing from one another? Abū Ḥanīfa says not from any *maḥram* relative like brother and uncle. The other three say that it is amputated.

Theft from public baths: They disagree about someone who steals clothes from a bathhouse which has a guard. Abū Ḥanīfa says that if he steals them at night, his hand is cut off, but if it is in the day, it is not. Ash-Shāfi'ī and Aḥmad in one view say that it is cut off in any case. Mālik says that if he steals something which is guarded in the

bathhouse, it is cut. If it is not guarded and there is a negligent client in the bathhouse, it is not cut. If someone steals a sack or bag when there is a guard, Abū Ḥanīfa says his hand is not cut off, whereas the other three say that it is.

Theft from thieves: If someone steals a stolen article from a thief or a misappropriated item from a usurper, Abū Ḥanīfa says that the hand of someone who steals a misappropriated article is cut off but the hand of someone who steals a stolen article is not cut off when the first thief has had his hand amputated for it. If his hand has not been cut, neither is the hand of the second. Mālik says that the hand of each of them is cut. Ash-Shāfi'ī and Aḥmad say that the *ḥadd* is not imposed on anyone who steals from a thief or a misappropriater.

Theft of one's own property: If a thief claims that what he took from a secured place was his property after proof has been established that he stole the minimum from a protected place, Mālik says that his hand is cut off in any case and his claim not accepted. Abū Ḥanīfa and ash-Shāfi'ī say that his hand is not cut off. Aḥmad has various statements. One is that it is not cut, another is that it is, and the third that his word is accepted if he is not known for theft and his hand is not amputated. If he is known for stealing, it is cut off.

Ḥadd dependent on victim's request: Is infliction of the *ḥadd* for theft dependent on the request of the victim of theft? Abū Ḥanīfa, Aḥmad in one view, and the Shāfi'ites say that it is necessary. Mālik says that it is not needed, and that is also transmitted from Aḥmad.

Killing a thief: If one man kills another in his house and says that he came in to steal and could only be stopped by killing, Abū Ḥanīfa says that there is no retaliation for it, if the intruder is known for corruption. Otherwise there is. Mālik, ash-Shāfi'ī and Aḥmad say that there is retaliation unless he presents evidence.

Theft from booty: If someone steals from the booty when he is entitled to some of it, is his hand cut off? Abū Ḥanīfa and Aḥmad say no. Mālik in his well-known position says that it is. There are two positions from ash-Shāfi'ī. The sounder is that it is not. They

agree that if he steals from the booty when he is not entitled to to what he takes, his hand is cut off.

Theft of game: When game which someone owns is stolen from a secure place, is the hand amputated for that? Mālik, ash-Shāfi'ī and Aḥmad say that it is amputated for everything which is normally considered property. It is permitted to take recompense for it, whether or not it is basically common property, like game, water and stones.

Highway Robbery

The Imams disagree about the *ḥadd* for highway robbers. Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad say that it must be applied strictly according to the order given in the noble *āyat*. Mālik says that no particular order need be followed. The ruler can choose between killing, crucifixion, amputation of alternate hand and foot, exile, or imprisonment. Those who say that there is an order which must be followed disagree about exactly how. Abū Ḥanīfa says that if the robber takes money and kills, then the ruler can choose. He can amputate alternate hands or feet, kill and crucify them, or kill them without crucifying them. The definition of crucifixion in the best known position is that the perpetrator is crucified alive and his stomach is pierced with a spear until he dies. He is not crucified for more than three days. If he killed and did not take money, the ruler kills him by the *ḥadd* and pays no attention to the pardon of the relatives of the victim. If a gang seize property belonging to a Muslim or *dhimmī*, and each would get ten dirhams or its equivalent if it were distributed among all of them, the ruler cuts off their alternate hands and feet. If they are captured before taking any property or killing anyone, the ruler should imprison them until they repent or die. This is what he considers to amount to exile. Mālik says that if brigands are captured, the ruler does to them what he thinks best and exercises his discretion. He should kill those of them with leadership and strength and exile the others. So the result is that he thinks that the ruler is permitted to kill them, crucify them, and use amputation. If they did not kill or take money, he does what he thinks will most

deter them and those like them. His description of exile is that they leave the land they are in for another and are imprisoned there. The definition of crucifixion is like that of Abū Ḥanīfa. Ash-Shāfi'ī and Aḥmad say that if they are captured before killing anyone or stealing property, they are exiled. If they take money but do not kill, Aḥmad says that their alternate hands and feet are cut and then they are left. If they kill and take money, he says that they should be executed and crucified. If they kill and do not take money, he says they should be executed and crucified afterwards. Some Shāfi'ites say that they are crucified alive and then killed. The period of the crucifixion with Abū Ḥanīfa, Mālik and ash-Shāfi'ī is three days.

Definition of highway robber: The Imams agree that if someone goes out and unsheathes his weapons to create fear on the road outside the city where there is no help, he is considered a highway robber on whom the *ḥadd* of highway robbers is to be carried out. They disagree about people who do that within a city. Three Imams say that they are the same. Abū Ḥanīfa says that the *ḥadd* of highway robbery only applies outside a city. If one of the robbers is a woman who kills and robs, three of the Imams say that she is killed by the *ḥadd*, and Abū Ḥanīfa says that she is killed by retaliation and is liable for any loss of life or damage she causes. They disagree about the minimum crime required for a brigand to be killed. Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad consider it, while Mālik does not. If the brigands gather and some of them kill and steal, and some help and support, Abū Ḥanīfa, Mālik and Aḥmad say that those who merely support them have the same judgement in all cases. Ash-Shāfi'ī says that the helper is only disciplined by imprisonment, exile and the like.

Wine-drinking

The Imams agree that wine is forbidden and impure, and that drinking a little or a lot of it obliges the *ḥadd*. If someone says that it is lawful, he is an unbeliever. They agree that when grape juice changes and froths up it is wine. They disagree about its status when three days have passed and it has not yet changed or become intoxi-

cating. Aḥmad says that when three days have passed, it becomes wine and is unlawful to drink, even if it is not changed or intoxicating. The other three say that it does not become wine until it is changed, intoxicating and foams.

Definition of wine: They agree that when a lot of any drink is intoxicating, then a little of it is unlawful and it is called "wine" (*khamr*) and there is a *ḥadd* for drinking it, whether it is made from grapes, dates, raisins, wheat, barley, millet, rice, honey, or yoghurt, except for Abū Ḥanīfa who says that when steeped dates and raisins change, whether it is a little or a lot, it is called an infusion (*naqī'*) but not *khamr*. If it intoxicates, there is a *ḥadd* for drinking it and it is impure. If it is cooked, it becomes lawful if the drinker thinks that it will not intoxicate him. If it has become strong, it is unlawful, and the removal of two-thirds of it by cooking does not remove the prohibition. As for the *nabīdh* made from wheat, barley, millet, rice and honey, he considers them lawful, both as an infusion and cooked. Any of it which intoxicates is unlawful and there is a *ḥadd* for it.

Cooked grape juice: They agree that when grape juice is cooked and less than a third of evaporates, it is unlawful. If two-thirds evaporate, it is lawful if it is not intoxicating. If it still intoxicates, both a little and a lot are unlawful.

The *ḥadd* for wine and its administration: They disagree about the *ḥadd* for drinking wine. Abū Ḥanīfa and Mālik say eighty lashes and ash-Shāfi'ī says forty and there are two positions from Aḥmad. They agree that the *ḥadd* for wine is inflicted with a whip except for what is reported from ash-Shāfi'ī that it can be done with hands, sandals and the ends of clothes.

Various ancillary issues: If someone admits to drinking wine but there is no smell coming from him, Abū Ḥanīfa says that there is no *ḥadd*, whereas the other three say that there is. If the smell of wine is smelt on him and he does not confess, three say that he does not incur the *ḥadd*, while Mālik says he does. If someone takes a mouthful and senses some wine, three of the Imams permit him to swallow it, whereas Mālik says in his well-known position that he should

not swallow wine in any case. Is it permitted to drink wine out of necessity, like for extreme thirst or medicine? Mālik and Aḥmad say it is permitted. Abū Ḥanīfa says that it is permitted for thirst but not medicine, and ash-Shāfi'ī has various positions. The soundest is that it is not permitted; another is that it is permitted for medicine, and a third is that it is permitted for extreme thirst if it will quench it and nothing else is available.

Alternative punishments (*ta'zīr*)

Ta'zīr is prescribed for every act of disobedience to Allah for which there is neither *ḥadd* nor *kaffāra*. Is carrying out punishment for something which merits *ta'zīr* an obligation owed to Allah or not? Ash-Shāfi'ī says that it is not mandatory but prescribed. Abū Ḥanīfa and Mālik say that if it is thought probable that someone will only be put right by beating, then it is mandatory, but if it is thought that he will be put right by something else, it is not mandatory. Aḥmad says that if an action merits *ta'zīr*, then it is mandatory.

Death from *ta'zīr*: If a ruler disciplines a man and he dies as a result of it, three Imams say that he incurs no liability, while ash-Shāfi'ī says that he does. If a father beats his son, or a teacher a child, for discipline and he dies, Mālik and Aḥmad say that he is not liable, while the other two say that he is.

***Ta'zīr* less than *ḥadd*:** Can *ta'zīr* reach the maximum of *ḥudūd*? Three say that it cannot, while Mālik says that it is up to the discretion of the ruler. If he thinks he should increase it, he does so. Does it differ with different causes? Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad say that *ta'zīr* should never amount to more than the lowest amount given for a *ḥadd*, and the lowest with Abū Ḥanīfa is forty lashes for wine, and with ash-Shāfi'ī and Aḥmad twenty. So the maximum *ta'zīr* is thirty-nine lashes, according to Abū Ḥanīfa, and nineteen, according to ash-Shāfi'ī and Aḥmad. Mālik says that the ruler can prescribe whatever number he thinks appropriate. Aḥmad says that it varies with different causes.

Administration of *ḥadd* punishments

Sick people and pregnant women: If a *ḥadd* is imposed on a sick person, is it deferred? Abū Ḥanīfa says that if it is stoning, it is only delayed for a pregnant woman. If it is flogging, it is delayed if it is hoped he will recover. Aḥmad says that it should never be deferred. Mālik and ash-Shāfi'ī say that if the *ḥadd* is execution, it is only deferred for a pregnant woman until she gives birth. If it is flogging, it is delayed if it is hoped that he will recover. They disagree about the manner in which the *ḥadd* is carried out on sick people. Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad say that he is beaten according to his condition. If the *ḥadd* is a hundred strokes and it is feared that he might die, he is beaten with a bunch of a hundred reeds, or the fringes of garments. If it not feared that he will die, it is carried out in separate instalments with a whip in a way which will not cause death, and the same applies to someone with a weak constitution. Mālik says that he is only beaten with a whip for a *ḥadd*. The beating can be divided, but the number must be completed. If the person is ill, it is delayed until he is well.

Various ancillary matters: Is a man beaten standing or sitting? Mālik says sitting. Abū Ḥanīfa and ash-Shāfi'ī say standing. Aḥmad has two positions. Must he be stripped? Abū Ḥanīfa and ash-Shāfi'ī say that he is not stripped for slander, but is for the rest. Mālik says that he is stripped for all *ḥudūd*. Aḥmad says that he is not stripped for any *ḥudūd*, but is beaten wearing something which will not impede the pain of beating, like a shirt. They disagree about what is beaten. Abū Ḥanīfa and Aḥmad say that it can be inflicted on the entire body except the face, genitals and head. Ash-Shāfi'ī says that one protects the genitals, face, waist and other feared places. Mālik says he is beaten on the back and around it.

Chapter Twenty-Two Self-Defence and Liability for Animals

Everyone is permitted to defend himself against a human being or an animal to protect life or limb or goods or property. If the attacker can only be repelled by killing, the defender may kill him and he is not liable, according to Mālik, ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that he is liable. If a person who has been killed is found in someone's house and he claims that the man came in to him with a sword and he killed him in self-defence, and there is evidence that this is what happened, there is no retaliation against him. If there is no evidence, some say that his claim is accepted and there is neither retaliation or blood money. Others say that there is blood money but not retaliation. If someone peers into another's house and the owner hits him and puts out his eye, Abū Ḥanīfa says that he liable, while ash-Shāfi'ī and Aḥmad say that he is not. There are two positions from Mālik.

Liability for damage by animals: Mālik, ash-Shāfi'ī and Aḥmad say that there is no liability for the owners of animals for anything they destroy during the day when their owner is not with him them, but he is liable for what they destroy at night. Abū Ḥanīfa says that he is not liable unless he is riding, leading or driving the offending animal, or he has released it, whether by night or day. If an animal has destroyed something while its owner is riding it, Abū Ḥanīfa says that the owner is liable for what it damages with its leg or mouth. If it treads on something, the rider is liable. If it kicks someone or something and the animal is in a legitimate and allowed place in the *Sharī'a*, like walking on the road, standing in the owner's property, or in the wilderness or an animal market, the owner is not liable. If the animal is in a non-permitted place, like entering a man's house without permission, then the owner is liable. Mālik says that an animal's leg, mouth and foot are the same.

Cats and dogs: If someone has a cat known to eat birds and he releases it and it eats birds, the owner is liable for what it eats or kills, whether at night or by day. If it is not known for that, there is no liability because the normal custom is to let the cat out. If someone has a fierce dog and releases and it damages something or injures someone, he is liable.

Chapter Twenty-Three

Military Expeditions

The Imams agree that *jihād* is a *fard kifāya* which means that when it is undertaken by some of the Muslims, the obligation is cancelled for the rest. They agree that the people of every frontier must fight the unbelievers close to them. If they are unable to do so, they should request help from those near them. They agree that if *jihād* is not specifically incumbent on someone, he may not go out to it without his parents' permission, if they are Muslims. If someone has a debt, he may only go out with the permission of his creditors. When the two forces meet, the Muslims who are present must stand firm and they are forbidden to flee, unless it is to go aside to fight or to move to another direction, or when it is one against three or one hundred against three hundred and then they may retreat. But they should stand firm even then, especially if they think they will win. Those in the *Dār al-Kufr* who are able to do so must emigrate.

Precondition of provision and mount: They disagree about whether it is a precondition for *jihād* to have provision and a mount. Three of the Imams say yes but Mālik says no. One point of disagreement is whether *jihād* is incumbent for the people of a town when there is a place of *jihād* a short distance from them. Three Imams say that it is only obligatory for the one who has provision and a mount to reach the site, but Mālik says that it is mandatory whatever the case.

Destruction of enemy property: They disagree about the permission to destroy the property of the enemy when the Muslims take it and cannot bring it into *Dār al-Islām* and fear it will be taken from them. Abū Ḥanīfa and Mālik say that it is permitted and that the animals should be slaughtered, goods burnt and weapons broken. Ash-Shāfi'ī and Aḥmad say that this is only permitted for the Muslim who has possession of it.

Who should not be killed: When unbelieving women do not fight, it is agreed that they should not be killed unless they are leaders – nor should the blind, the bed-ridden or old men. If the people of a monastery have a leadership or planning role, it is agreed that they should be killed. If they have no leadership or planning role, Abū Ḥanīfa, Mālik and Aḥmad say that it is not permitted to kill them, and ash-Shāfi‘ī has two positions, the most evident being that it is permitted to kill them.

The call to Islam: They disagree about the call to Islam. Mālik says that people living near the Muslims should not be called since they know about Islam. They must be fought. In the case of those living far away, giving the call removes any doubt. Abū Ḥanīfa says that even if they have knowledge of Islam, it is good for the ruler to call them to Islam or ask them to pay the *jizya* before fighting. If the call to Islam has not reached them, it is not absolutely necessary for the ruler to initiate it. Ash-Shāfi‘ī says that, in any case, he does not know of any idolater whom knowledge of Islam has not reached, except perhaps for some idolaters beyond the Turks. They are not fought until they are called to belief. If any of them are killed before that, his relatives are entitled to blood money. Abū Ḥanīfa says that nothing is owed and that is the evident position of the Mālikī school. If someone has not heard the call, is there blood money for killing him? Abū Ḥanīfa, Mālik and Aḥmad say no. Ash-Shāfi‘ī said that the killer owes blood money. If the slain is a *dhimmī*, it is a third of blood money.

Safe conduct: Ash-Shāfi‘ī and Abū Ḥanīfa say that a safe conduct for an unbeliever is only valid when given by a sane adult Muslim. A safe conduct issued by a child or mad person is not valid. Mālik and Aḥmad say that the safe conduct of an adolescent is valid.

Muslims used as human shield: They agree that when the unbelievers use Muslims as a shield, it is permitted for the rest of the Muslims to shoot, aiming for the unbelievers. There is disagreement about what happens if one of the Muslims is hit. Abū Ḥanīfa and Mālik say that neither blood money nor *kaffāra* is necessary. Ash-Shāfi‘ī has two positions: one is that *kaffāra* is performed but

no blood money is paid, and the second is that both blood money and *kaffāra* are due. There are two views from Aḥmad, the more evident being that only *kaffāra* applies.

Enslaving total unbelievers: They disagree about enslaving people with no book or with a quasi-book, such as idol worshippers. Abū Ḥanīfa says that it is permitted to enslave the non-Arabs among them. Mālik, ash-Shāfi‘ī and one view of Aḥmad say that it is not permitted at all. Ash-Shāfi‘ī has two views about whether a prisoner can be enslaved if he is Muslim.

If the enemy become Muslim: If an unbeliever becomes Muslim before he is captured, he is safe, even in *Dār al-Ḥarb*, according to Mālik, ash-Shāfi‘ī and Aḥmad. Abū Ḥanīfa says that whatever immovable property he has in *Dār al-Ḥarb* is taken as booty. Others think say that what is in his possession or in the possession of a Muslim or *dhimmī* is not considered booty, but anything in the possession of a *ḥarbī* is. If *ḥarbīs* enter *Dār al-Islām* without any hostile intent, it is not permitted to capture them according to three of the Imams, while Abū Ḥanīfa says they can be captured.

Division of booty and spoils

The Imams agree that any property of the unbelievers the Muslims obtain through the use of horses and spears is booty: both people and goods. If someone despoils one of the enemy he has killed, he is entitled to what he takes, whether or not the ruler stipulates that, according to ash-Shāfi‘ī. Aḥmad says that the killer is entitled to the spoils when he has risked himself in fighting an idolater and then has removed his goods. Abū Ḥanīfa and Mālik say he is not entitled unless the ruler stipulates that. After such personal booty, a fifth must be taken from the general booty.

Division of the fifth: They disagree about the division of the fifth. Abū Ḥanīfa and Mālik say that it is divided into three shares: one for orphans, one for the poor, and one for travellers. Men and women take equal shares. Mālik says that the fifth is for specific people, but deciding about that is up to the ruler. He spends it wherever he sees

fit and to whichever Muslims he thinks most entitled. The ruler can only give to his own relatives from the fifth from spoils taken without fighting (*fay'*), from land tax (*kharāj*) and from the *jizya*. Ash-Shāfi'ī and Aḥmad say that the fifth is divided into five parts: the share of the Prophet, which continues and was not cancelled when he died; the share of the Banū Hāshim (who are not entitled to *zakat*) for their rich and poor, but the male of them has the share of two females, and the children are not entitled; the share of the orphans; the share of the poor; and the share of travellers. These three categories are entitled by poverty and need, not by family. They disagree about who receives the share of the Messenger of Allah, may Allah bless him and grant him peace. Ash-Shāfi'ī says it is spent in beneficial ways, like the manufacture of arms, public transport, building bridges and mosques, and such things. There are two reports from Aḥmad, one is the same as ash-Shāfi'ī and the other is that it should be spent among the people of the *dīwān* (register of fighters), who are those who devote themselves to fighting and are stationed on the frontiers to protect them, and it is divided according to the amount which will be adequate for them.

Remainder of the booty: They disagree about the remaining four-fifths which is divided between those present at the battle with the aim of fighting. The man on foot gets one share. They disagree about horsemen. Mālik, ash-Shāfi'ī and Aḥmad say that they get three shares: one for themselves and two for the horse. Abū Ḥanīfa says that they only get two: one for themselves and one for the horse, saying that he did not like to prefer a beast to a Muslim. If he has two horses, his share is not increased. Aḥmad said that a stallion gets two shares and a mule one share. Abū Ḥanīfa, Mālik and ash-Shāfi'ī say that a camel gets no share and Aḥmad says that it gets one share. If someone enters enemy territory with a horse and the horse dies before the battle, Mālik says that the horse has no share, which is not the case if it dies in battle or after it. That is the position of ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that if he enters enemy territory riding and then the horse dies before the battle, there is a share for the horse.

Further points about booty distribution: They agree that when the booty has been assessed and divided, and then reinforcements arrive, the reinforcements do not get a share. If the reinforcements arrive after the battle but before division, Abū Ḥanīfa says that they get a share if the booty has not reached Muslim territory or been divided. Mālik and Aḥmad say that they get no share. There are two views from ash-Shāfi'ī. They agree that slaves, women, children and *dhimīs* who are present at the booty sharing should receive a gift, which is a share concerning which the ruler uses his discretion and not a full share. Mālik says that if the child is an adolescent and is able to fight and the ruler allows it, he has a full share, even if he is not an adult.

Regulations concerning booty in *Dār al-Ḥarb*: Is it permitted to divide the booty in *Dār al-Ḥarb* or not? Three say that it is, while Abū Ḥanīfa says it is not. The Hanafis say that if the leader cannot find bearers to take the booty out of *Dār al-Ḥarb*, he divides the booty there if there is fear for its safety. If the leader divides it in *Dār al-Ḥarb*, the division is binding. Can food, fodder and animals be used in *Dār al-Ḥarb* without permission of the leader? Abū Ḥanīfa and Aḥmad in one view say that there is no harm in that, even without permission. Aḥmad has another view, which is that he should return what is in excess of his needs if it is a lot, but not if it is a little. Ash-Shāfi'ī said that if it is a lot with value, he should return it. Mālik says that anything brought to Muslim territory is booty.

Treatment of captives: They agree that the ruler can choose between killing captives and enslaving them. They disagree about whether he can choose between grace, ransom and making them *dhimīs*. Mālik, ash-Shāfi'ī and Aḥmad said that he can choose between ransom by money or prisoner exchange and being gracious to them. Abū Ḥanīfa says that he may not show grace or allow ransom. As for the contract of *dhimma*, Abū Ḥanīfa and Mālik say that he can choose that and they are free. Ash-Shāfi'ī and Aḥmad say that he cannot do that because they are owned through capture.

Muslim captives abiding by their word: If a Muslim is captured and the unbelievers make him swear not to leave their house or flee if he is left to come and go, Mālik says that he must abide by it and not flee. Ash-Shāfi'ī said that he may not abide by it but must leave and that the oath is invalid because it is made under duress. That is also what Abū Ḥanīfa said.

Unbelievers suing for peace: If a group of unbelievers make peace provided that they keep their lands and pay something for them, it is like *jizya*. If they become Muslim, the payment is dropped from them. The payment is also dropped if a Muslim buys the land from them. That is the position of ash-Shāfi'ī. Abū Ḥanīfa says the land tax is not cancelled for them by Islam nor by a Muslim buying the land.

Seeking military support from unbelievers: Can Muslims ask unbelievers for help in fighting or to help them against their enemies? Mālik and Aḥmad say that their help should not be sought nor should they be given help. Mālik says that if they are serving the Muslims, then it is permitted. Abū Ḥanīfa says that they can be asked for help and be helped in general when they are subject to the rule of Islam. If they are under non-Muslim rule it is disliked. Ash-Shāfi'ī says that it is permitted under two conditions: that the Muslims are few and the unbelievers many, and that it is known that the idolaters have a good opinion of Islam. If they are asked to help, there is an allowance for them but not a share of the booty.

Ḥudūd in Dār al-Ḥarb: Are the *ḥudūd* imposed in *Dār al-Ḥarb* in the same way as they would be in *Dār al-Ḥarb*? Mālik says that they are. So anything which a Muslim commits in *Dār al-Ḥarb*, which would incur a *ḥadd* in *Dār al-Ḥarb*, incurs the same punishment in *Dār al-Ḥarb*, whether it is one of the rights of Allah or one of the rights of humans. If he fornicates, steals, drinks wine or slanders, the *ḥadd* is imposed. That is stated by ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that the *ḥadd* for adultery, theft, wine or slander is not carried out unless there is an imam in *Dār al-Ḥarb* who will carry it out himself. Mālik and ash-Shāfi'ī say that the *ḥadd* is not carried out in *Dār al-Ḥarb* but is deferred until the culprit returns to

Dār al-Ḥarb. Abū Ḥanīfa says that if the overall leader of the Muslims is with the Muslim army in *Dār al-Ḥarb*, the *ḥadd* is carried out in the army before travelling. The commander of the forces should not carry out the *ḥadd* in the enemy territory.

Booty for non-fighters: Is there a share for merchants and hirelings of the army who are present at the battle, even if they do not fight? Abū Ḥanīfa and Mālik say that they get no share unless they fight. Ash-Shāfi'ī and Aḥmad say that they get a share, even if they do not fight. Ash-Shāfi'ī has another position, which is that they get no share, even if they fight.

The status of enemy gifts: Are gifts to generals of the armies from the enemy personal or are they considered spoils? Mālik says that they are booty from which a fifth is owed. If one of the enemy gives something to a Muslim man who is not a commander, there is nothing wrong in him taking it and it belongs to him and not the army. As a general principle ash-Shāfi'ī says that if anyone gives someone in authority a gift, and it is something by which he hopes to obtain or violate a right, it is unlawful for the official to take it because he is taking a wage for a right which Allah has made obligatory. If he gives to him for other than these two reasons, out of thankfulness, he should not accept it either. If he does accept, it can only be by way of *ṣadaqa* in order to cover his essential needs.

Taking from the booty before distribution: They agree that if someone takes something from the booty before it is distributed when he has a right to it, his hand is not amputated. They disagree about someone who does not have a right. Is his baggage burned and is he denied his share? Abū Ḥanīfa, Mālik and ash-Shāfi'ī say that his baggage is not burned and he is not denied his share. Aḥmad said that his baggage which was with him is burned, except for the Qur'an and living creatures and what is needed for fighting, like weapons. He has two views about his share.

State income from other sources: Is a fifth taken from the following categories: the booty taken from unbelievers because of their disbelief when no fighting is involved (*fay'*), *jizya* which is taken from *dhimmīs*, the tax on lands taken which is called *kharāj*, the

property of apostates if they are killed while still apostates, the property of people who die without heirs, the tax of a tenth which is taken from unbelievers when they trade in the lands of the Muslims or money given when they make peace? Abū Ḥanīfa and Aḥmad say those levies are for all the Muslims and there is no fifth. It is all to be used in the best interests of the Muslims as a whole. Mālik says that none of it is divided and the ruler should spend it in the best interests of the Muslims, after taking what he needs from it. Ash-Shāfi'ī says that there is a fifth from it, as there was for the Messenger of Allah, may Allah bless him and grant him peace. There are two statements about what is done with it after his share. One is that it is dedicated to the best interests of the Muslims and the other is that it is for the fighters.

Jizya

The imams agree that *jizya* must be imposed on the People of the Book: Jews and Christians, and on the Magians. They disagree about whether the Magians are People of the Book or a quasi-Book. Abū Ḥanīfa, Mālik and Aḥmad say that they are not People of the Book. They have a quasi-Book. Two positions are reported from ash-Shāfi'ī. They disagree about those who have no book or quasi-book, like the idolaters among Arabs and non-Arabs. Is *jizya* taken from them? Abū Ḥanīfa says that it is taken from non-Arabs, but not Arabs. Mālik said that it is taken from every unbeliever, Arab or non-Arab, except the idolaters of Quraysh. Ash-Shāfi'ī and Aḥmad in one view say that *jizya* is not accepted from idolaters at all.

The amount of the *jizya*: They disagree about whether the amount of the *jizya* is predetermined or not. Abū Ḥanīfa and Aḥmad in one view say that it is predetermined: minimum and maximum. A poor *dhimmī* who works pays twelve dirhams, an average one twenty-four dirhams, and a wealthy one forty-eight dirhams. Aḥmad has another view which is that it is left to the discretion of the ruler and it has no fixed amount. He has a third position which is that it has a minimum but no maximum, and a fourth view which is that it is one dinar for the Yemenis but not others, based on a *ḥadīth*. Mālik says

in his well-known position that it is determined for poor and rich equally, being four dinars or forty dirhams. Ash-Shāfi'ī says that it is one dinar for all.

Poor *dhimmīs*: They disagree about poor *dhimmīs* who do not work and have no wealth. Three say that nothing is taken from them, while ash-Shāfi'ī says that the contract of *jizya* applies also to those who are not earning. There are two positions about those who are unable to pay. One is that they should be expelled from *Dār al-Islām*, and the second is that they should not. If they are not, there are various views about what should be done. One is that nothing is taken from them. The second is that it becomes a debt. Their lives are safe, but they remain liable for it, and it is demanded from them if they become wealthy. The third is that if a year passes and they do not pay, they are deported to *Dār al-Ḥarb*.

***Dhimmīs* who become Muslim:** If *jizya* is owed by someone who does not pay it and then he becomes Muslim, Abū Ḥanīfa, Mālik and Aḥmad say that the *jizya* is cancelled, even if it is for two years. Ash-Shāfi'ī says that Islam after a year does not cancel the *jizya* because it is mandatory. If one year goes into another and he has not paid the first, is the *jizya* of the past cancelled or must he pay for two years? Abū Ḥanīfa says it is cancelled. Ash-Shāfi'ī and Aḥmad say that he must pay for both years.

People exempt from *jizya*: They agree about *jizya* not being imposed on *Kitābī* women, children, slaves, mad people, and old men. Nor is it imposed on monks.

Honouring treaties with unbelievers: They agree that when unbelievers make a treaty, its terms should always be observed, except in the view Abū Ḥanīfa, who makes it a precondition that the terms must entail some benefit for the Muslims. If the benefit ends, the treaty is automatically abrogated. They agree that if a woman of the idolaters emigrates to *Dār al-Islām* and the ruler has agreed to a stipulation that if a Muslim enters his territory, he will return him to the unbelievers, she is not returned.

Ḥarbī traders in Dār al-Islām: If *ḥarbīs* pass with goods through Muslim territory, may any of them be taken? Abū Ḥanīfa says that they may not. Mālik and Aḥmad say that a tenth should be taken. Mālik adds that this is when he enters with safe conduct and no more than the tenth is stipulated. If more is stipulated when he enters, it should be taken. Ash-Shāfi'ī says that if the tenth is stipulated, then it is permitted to take it. Otherwise not.

Dhimmī traders: If a *dhimmī* carries on trade from one land to another, Mālik says that a tenth should be taken whenever he trades, even if that is several times in a year. Ash-Shāfi'ī says that only what is stipulated is taken from him. Abū Ḥanīfa and Aḥmad say that a fifth should be taken from *dhimmīs*. Abū Ḥanīfa and Aḥmad consider that there is a *niṣāb* in respect of that. Abū Ḥanīfa says that the *niṣāb* is the same as that of *zakat* for Muslim property. Aḥmad says that the *niṣāb* for a *ḥarbī* is five dinars, and for a *dhimmī* ten.

Breaking the treaty of the *dhimma*: They disagree about a *dhimmī* who breaks the treaty of the *dhimma*. Mālik, ash-Shāfi'ī and Aḥmad say that the treaty is broken by refusing to pay *jizya* and refusing to abide by the laws of Islam when judgement is given. Abū Ḥanīfa says that it is only broken if they form a group to fight the Muslims or emigrate to *Dār al-Ḥarb*. There is a question about what happens when a *dhimmī* does something he should not do, or fails to do what he should, when that causes harm to the Muslims. That is in eight matters: gathering to fight the Muslims, committing fornication with a Muslim woman, enticing a Muslim from his *dīn*, committing highway robbery, spying for the enemy, guiding them to the Muslims, writing to the enemy with information about the Muslims, or murdering a Muslim. Is the treaty of the *dhimma* broken by these things or not? Abū Ḥanīfa says that it is not broken by these things, or by the two matters we mentioned before, unless they have a force and conquer a place and fight the Muslims or go to enemy territory. Ash-Shāfi'ī says that when a *dhimmī* fights the Muslims, he breaks his treaty whether it was stipulated that he not do it in the treaty or not. If he does any of the other seven, and there was no specific stipulation that he refrain from that in the treaty, he does not break it. If it was stipulated, the Shāfi'ites take two views. One is that he breaks

it, which is predominant, and the other is that he does not. Mālik says that it is not broken by fornication with a Muslim woman or by marriage, but that it is broken by the rest, except for highway robbery. There are two views from Aḥmad. The most likely is that the treaty is broken by all these eight things, whether they were stipulated or not, and the second is that it is only broken by refusing to pay the *jizya* and carry out Muslim law.

Denigration of Islam by *dhimmīs*: If a *dhimmī* does something which entails denigration of Islam, is the contract broken by that? That consists of four things: mentioning Allah in a manner inappropriate to His majesty, denigrating His Holy Book, denigrating His *dīn*, and denigrating His noble Messenger. Aḥmad says it is, whether or not it is stipulated that he does not do that. Mālik says that if they abuse Allah, His Messenger, His *dīn* or His Book in any other way than the way their disbelief normally does, that breaks it, whether or not it was stipulated not to do that. Most Shāfi'ites say that the judgement for doing it is the same as anything else entailing harm for the Muslims, which are the seven things above. If the treaty does not stipulate refraining from it, it is not broken. If it does, there are two views. Abū Ḥanīfa says that none of those things break the treaty. It is only broken by the two matters already mentioned.

Penalty for breaking the treaty: They disagree about what is done if a *dhimmī* breaks the treaty? Abū Ḥanīfa says that it is permitted to kill anyone who breaks it. Mālik says in his well-known position that he is killed or captured, as the Messenger of Allah, peace be upon him, did. Ash-Shāfi'ī, in one view, and Aḥmad say that the one who breaks his treaty is not returned to security. The ruler has a choice between enslavement and execution.

Unbelievers entering the *Ḥaram* or the Hijaz: Is an unbeliever forbidden to enter the *Ḥaram*? Abū Ḥanīfa says that he is permitted to enter in and stay there as a traveller, but not as a resident. The other three say that it is totally forbidden. Abū Ḥanīfa permits an unbeliever to enter the Ka'ba. Is it forbidden for unbelievers, *dhimmīs* and *ḥarbīs* to live in the Hijaz? Abū Ḥanīfa said that it is

not forbidden. The other three say that it is, unless one of them enters to trade or the ruler gives him permission, and then he may not stay more than three days. Except for the *Masjid al-Ḥarām*, Abū Ḥanīfa says that idolaters can enter it without permission. Ash-Shāfi'ī says that they are only permitted to enter it with the permission of the Muslims. Mālik and Aḥmad say that they are not permitted to enter it at all.

Building churches and synagogues: They agree that it is not permitted to build a new church or synagogue in cities in *Dār al-Islām*. They disagree about whether it is permitted to build nearby. Three say that it is not permitted, but Abū Ḥanīfa says that if the place is within a mile or so of the city, it is not permitted, but if it is further, it is. Can churches and synagogues which are in disrepair or fallen down in Muslim territory be rebuilt or repaired. Abū Ḥanīfa, ash-Shāfi'ī and Mālik permit that, while Abū Ḥanīfa stipulates that the church must be in land which was conquered by treaty and does not allow it if it was taken by force. Aḥmad has three views. The preferred is that it is not permitted to repair or rebuild, the second is that it is permitted to repair but not build, and the third is that it is all permitted.

Chapter Twenty-Four

The Appointment of a *Qāḍī* (judge)

It is not permitted to appoint as *qāḍī* someone who is not a *mujtahid*, in the view of Mālik, ash-Shāfi'ī and Aḥmad. Abū Ḥanīfa says that it is permitted to appoint someone who is not a *mujtahid*, but later Hanafis disagree about that. The appointment of non *mujtahid* judges in our time is valid to fulfil a role in Islam which is a *farḍ kifāya*.

Female *qāḍīs*: Can a woman be a *qāḍī*? Mālik, ash-Shāfi'ī and Aḥmad say no, but Abū Ḥanīfa says that a woman can be a *qāḍī* for any matter in which the testimony of women is accepted. He says that the testimony of women is accepted in respect of everything except cases involving the *ḥudūd* and retaliation, and in his opinion women can give judgement in all cases except those. A slave cannot be a *qāḍī*.

The obligation to appoint a *qāḍī*: Is appointing a *qāḍī* a *farḍ kifāya* or not? Abū Ḥanīfa, Mālik and ash-Shāfi'ī say that it is. Someone must be designated to undertake the role of *qāḍī*, even if there is no one properly qualified to do it. Aḥmad says in one version that it is not a *farḍ kifāya*.

Basis of judgement: The *qāḍī* should not pass judgement according to anything other than his knowledge of the general consensus of the Muslims. Can he judge on the basis of his personal knowledge of a particular situation? Abū Ḥanīfa says that if the judge saw someone doing something which would incur a *ḥadd*, either before or after he became *qāḍī*, he may not give judgement on that on the basis of his personal knowledge of it. He may judge by what he knows of the rights of people before and after becoming *qāḍī*. Mālik and Aḥmad say that he may not judge by his personal knowledge of a situation at all, whether in respect of the rights of Allah or the rights of people. The sound position in the school of ash-Shāfi'ī is that he may

judge by personal knowledge, except in respect of the *hudūd* of Allah.

Translators: If a *qāḍī* does not know the language of the litigants when they speak a different language, he must have someone who can translate. They disagree about who is acceptable for that, and how to determine whether he is reputable or not. Abū Ḥanīfa says that the testimony of one man is accepted, and Aḥmad in one view also says that the testimony of one man is accepted. Abū Ḥanīfa says that the translator is permitted to be a woman. Ash-Shāfi'ī, and Aḥmad in another version, say that two men are necessary. Mālik also says that there must be two. If the dispute is about property, a man and two women are accepted. If it is connected to physical judgements, then only two men are accepted.

Integrity of witnesses: The imams disagree about hearing the testimony of someone whose inner integrity is not known. Abū Ḥanīfa says that the judge inquires about his inner integrity in respect of the *hudūd* and retaliation, but not in other cases, unless the litigant impugns the character of the witness. He hears the testimony and is satisfied with their apparent integrity. Mālik, ash-Shāfi'ī and Aḥmad in one position say that it is not enough to judge by apparent integrity without knowing inner integrity, whether his character is impugned or not and whether the testimony is about a *ḥadd* or any other matter. Aḥmad has another position which is that the judge should be satisfied with outward profession of Islam.

Absent plaintiffs: There can be no judgement against an absent person unless someone attends to take his place, such as an agent or executor, according to Abū Ḥanīfa. In the view of the other three there can be judgement against him. If judgement is given for a man in respect of a right claimed against someone absent, a child or a mad person, does it require an oath? Ash-Shāfi'ī has two views, the sounder of which is that it does. Aḥmad says that it does not require taking an oath.

Letters from *qāḍī* to *qāḍī*: They agree that a letter from a *qāḍī* to a *qāḍī* about *hudūd*, retaliation, marriage, divorce and *khul'* is not accepted, except in the view of Mālik, who accepts it in all such

cases. They agree that a letter from one *qāḍī* to another about financial rights is accepted. They disagree about how judgement on that basis is carried out. Abū Ḥanīfa, Ash-Shāfi'ī and Aḥmad say that it is not accepted until two men testify that the letter of the *qāḍī* was read to them. Mālik has two reports, one is like that of the group and the other is that someone's word is enough when he says that it truly is the letter of the *qāḍī* and it was witnessed. What if two *qāḍīs* correspond in the same place? The Ḥanafīs differ about whether or not that is accepted. Ash-Shāfi'ī and Aḥmad say that it is not accepted.

Judgement of an independent *mujtahid*: If two men empower an independent *mujtahid* to judge between them and say that they will accept his judgement, is his judgement then binding for them? Mālik and Aḥmad say that it is and that their consent is not considered. It is not permitted for the judge of the city to nullify that judgement, even if he holds a contrary opinion. Abū Ḥanīfa says that his judgement is binding on them if it concurs with the opinion of the *qāḍī* of the land, and it should be implemented by the *qāḍī* when it is presented to him. If it does not agree with his opinion, he can nullify it. It is something on which the Imams disagree, ash-Shāfi'ī has two statements. One is that it is binding, and the other is that it is only binding with their consent. It is the same with a *fatwā* from him.

Forgetting a judgement: If a judge forgets a judgement he has made and two witnesses testify to what it was, Mālik and Aḥmad say that their testimony is accepted. Abū Ḥanīfa and ash-Shāfi'ī say that their testimony is not accepted.

Judging by what is apparent: The judgement of a judge does not deal with what is hidden. He makes his judgement based on what is apparent. If someone claims that he is owed something by a man and two witnesses testify to that and the judge passes judgement based on their testimony, if their testimony was true, that thing is lawful for the person, outwardly and inwardly. If it was false testimony, the case is decided by judgement according to the apparent situation, but inwardly it is between the perpetrator of falsehood and Allah. This is the position of Mālik, ash-Shāfi'ī and Aḥmad.

Differing judgements: They agree that if a judge judges by his own *ijtihad* and then it becomes clear that there is an *ijtihad* contrary to it, that does not cancel the first judgement.

Claims and Evidence

The Imams agree that when a man is present and makes a claim against another man and seeks to have him summoned from another country to the land where the claimant is, the request is not granted. They disagree about a land in which there is no judge. Abū Ḥanīfa says that it is not obliged for him to attend unless it is a distance in which he can return home in the same day. Ash-Shāfi'ī and Aḥmad say that the judge summons him no matter what the distance.

Conflicting evidence: When two pieces of evidence conflict, but one of the parties is better known for his integrity than the other, is his evidence preferred or not? Abū Ḥanīfa, ash-Shāfi'ī and Aḥmad say that it is not. Mālik says that it is. If a man claims a house which is in the possession of another man and their evidence conflicts, Abū Ḥanīfa says that the evidence of neither is set aside and it is divided between them. Mālik says that they are asked to take oaths and it is divided. If one swears and the other refuses to, the claim of the swearer is upheld. Aḥmad says two things: one is that the evidence of both is ignored, and the second that the evidence of neither is set aside and it is divided between them.

Marriage claims: If a man claims to have married a woman in a sound marriage, Abū Ḥanīfa and Mālik say that his claim is heard without mentioning any preconditions for validity. The other two say that the judge does not hear his claim until he mentions the necessary preconditions for a valid marriage.

Refusal to swear an oath: If someone against who a claim is made refuses to swear an oath, is the oath whom offered to the claimant? Abū Ḥanīfa says that it is not offered and judgement is based on the refusal. Mālik says that it is offered, and judgement is given in favour of the one against whom the claim was made, that is for refusing to swear in respect of cases which are decided by a witness

and an oath, or a male and two females. Ash-Shāfi'ī says that the oath is offered to the claimant and judgement is made against the defendant in all cases if he refuses to swear.

Division of household goods: If a couple disagree about the ownership of the household goods in their possession of the matrimonial home about which there is no proof to which partner it belongs, Abū Ḥanīfa says that what is clearly in the possession of each is considered to be theirs. What is proper for men belongs to the husband, and his word is accepted about it, and what is proper for women belongs to the wife, and her word is accepted about it. What is proper for both of them belongs to the husband while he is alive, and after he dies, it is divided equally between them. Mālik says that all that is proper for both of them is for the man. Ash-Shāfi'ī says that it is shared out between them after oaths are taken. Aḥmad says that if the dispute is about things which usually belong to men, like scholars' shawls and turbans, one takes the man's word. If they usually belong to women, like scarves, then the word taken is that of the woman. If it is proper for both, then it is shared between them after death, and there is no difference between what is actually in their possession or is deemed to belong to them by judgement. It is the same when there is a dispute between their heirs.

Debt repayment without debtor's permission: If someone is owed a debt by someone who denies it and he has the ability to pay him, can the amount of his debt be taken from him without his permission? Abū Ḥanīfa says that the debt can be taken from the same type of property. Mālik has two statements. One is that if he is the only creditor, he can take it in full without his permission. If there are other creditors, then he takes his share of the division and returns the rest. The second position, which is that of Aḥmad, is that it may not be taken without the debtor's permission. Ash-Shāfi'ī says that it can be taken without permission.

Witnessing

The Imams agree that witnessing is a precondition for marriage. In other contracts, like sales, it is not a precondition. They agree that

a *qāḍī* should not prompt witnesses, but should simply listen to what they say. Witnesses in sales agreements are recommended but not mandatory,

Women witnesses: Women are not accepted as witnesses in *ḥudūd* and retaliation cases, but are accepted as women alone in respect of matters which men do not see, such as birth, suckling and other things usually hidden from men. They disagree about whether their testimony is accepted in respect of things which men are usually aware of, like marriage, divorce and other such matters. Abū Ḥanīfa says that their testimony is accepted, whether individually or together with men. Mālik says that it is not accepted in respect of those matters. It is accepted in matters not involving money and in cases involving defects in women and places which only they know about. That is also the position of ash-Shāfi'ī and Aḥmad. They disagree about how many women need to testify. Abū Ḥanīfa and Aḥmad in his best known view say that the testimony of one woman is accepted. Mālik and Aḥmad in another view say that not less than two is accepted. Ash-Shāfi'ī only accepts four women.

Establishing a live birth: They disagree about what establishes a child's live birth. Abū Ḥanīfa says it is the testimony of two men or a man and two women if it entails inheritance. If it is only a matter of the prayer over him and *ghusl*, the testimony of one woman is accepted. Mālik said that two women are accepted. Ash-Shāfi'ī says that the testimony of individual women is accepted although his basic principle is that there should be four women. Aḥmad says that the testimony of one woman is accepted.

Establishing relationship by suckling: They disagree about suckling. Abū Ḥanīfa says that only the testimony of two men is accepted for it or one man and two women. Women are not accepted when they witness without a man. Mālik and ash-Shāfi'ī say that it is accepted, as a group of women, from them, although Mālik says in his well-known position that there is a precondition of the testimony of two men as well, and ash-Shāfi'ī stipulates four women. Mālik has one view which is that one witness is accepted when it is a mat-

ter of common knowledge. Aḥmad says that they are accepted as women alone.

Child witnesses: The testimony of children is accepted by Abū Ḥanīfa, ash-Shāfi'ī, and Aḥmad. Mālik says that it is accepted in cases of physical injuries when the children agree in their testimony before they separate, which is one view of Aḥmad. There is a third position from Aḥmad which is that the testimony of children is accepted in general.

Testimony of slanderers: Is the testimony of someone who has received a *ḥadd* for slander accepted? Abū Ḥanīfa says that his testimony is not accepted, even if he repents, if his repentance comes after the *ḥadd*. Mālik, ash-Shāfi'ī and Aḥmad say that his testimony is accepted when he repents, whether his repentance is before or after the *ḥadd*, although Mālik stipulates that his testimony is not accepted in respect of any matter of the same kind for which the *ḥadd* was carried out. Are righteous deeds and refraining from disobedience preconditions for repentance? Mālik says that the appearance of good actions is a precondition without further details. Aḥmad says that repentance is enough. They disagree about the definition of repentance. Ash-Shāfi'ī says that it is that someone should admit that the slander was false and say that he will never revert to what he said. Mālik and Aḥmad say that he must admit he was lying. The testimony of a bastard is accepted for adultery and other things.

Blind witnesses: Is the testimony of a blind man accepted? Abū Ḥanīfa does not accept his testimony at all. Mālik and Aḥmad say that it is accepted in things which are a matter of hearing, like lineage, death, general ownership, *waqf* and all contracts like marriage, sales, settlement, hire and such things, whether he was born blind or became blind. Ash-Shāfi'ī says that it is accepted in respect of three things: what is widely known, translation and death, but not in precise matters.

Dumb witnesses: The testimony of a mute is not accepted by Abū Ḥanīfa and Aḥmad, even if his indication is understood. Mālik says

that it is accepted when he can be understood by gesture. The Shāfi'ites disagree and some say that it is not accepted, which is sounder. Some say that if he indicates, it is accepted.

Common knowledge: The testimony of widespread knowledge is accepted by Abū Ḥanīfa in respect of five things: marriage, its consummation, lineage, death, and the appointment of a *qāḍī*. The sound position of ash-Shāfi'ī is that it is permitted in respect of eight matters: marriage, lineage, death, appointment of a *qāḍī*, ownership, emancipation, *waqf* and *walā'*. Aḥmad says that it is permitted in respect of nine matters: those eight and the consummation of marriage.

Possession: Is possession considered to be testimony to ownership, as, for instance, when someone is seen using something in his possession over a long period? The position of ash-Shāfi'īs is that it testifies to possession but not ownership. Is it permitted for it to attest to ownership? Aḥmad and one Shāfi'īte position say that it is permitted. A second view is that it is not permitted. Abū Ḥanīfa says that common knowledge is permitted as testimony in respect of ownership and possession is also admitted as testimony. That is reported from Aḥmad. Mālik says that testimony to possession is permitted in respect of a short period rather than ownership. If it is a long period, like ten years or more, ownership is definitely established.

Dhimmī witnesses: Is the testimony of the people of the *dhimma* accepted against one another? Abū Ḥanīfa says that it is and Mālik and ash-Shāfi'ī say that it is not. There are two views from Aḥmad. Is their testimony accepted regarding Muslims in bequests during journeys when they are the only people present? Three say that it is not and Aḥmad says that it is when they testify that they have not been treacherous or altered or changed anything.

One witness and an oath: The Imams agree that it is not valid to judge by one witness and an oath in anything other than property and its rights. Then they disagree about property and its rights and whether it is valid to judge regarding it by a witness and an oath or not. Mālik, ash-Shāfi'ī and Aḥmad say that it is valid. Abū Ḥanīfa

says that it is not valid. Can there be judgement regarding property rights by the testimony of two women and an oath? Mālik says there can be. Ash-Shāfi'ī and Aḥmad say not. When a judge judges by one witness and an oath and then the witness retracts, ash-Shāfi'ī says that the witness is liable for half the money. Mālik and Aḥmad say that he is liable for all of it.

Enemies as witnesses: Is the testimony of an enemy against his enemy accepted? Abū Ḥanīfa says that it is when their enmity does not go as far as iniquity. The other three say that it is not accepted.

Parents and children as witnesses: Is the testimony of a parent for his children or a child for his parents accepted? Abū Ḥanīfa, Mālik and ash-Shāfi'ī say that the testimony of parents for children is not accepted nor the testimony of parents for children, whatever their degree of closeness. Aḥmad has three positions, one like the group; the second is that the testimony of a son for a father is accepted, but not that of a father for his son; and the third is that both are accepted as long as it would not generally lead to benefit.

Other doubtful witnesses: Is the testimony of a brother for a brother and friend for a friend accepted? All but Mālik say that it is. He says that it is not accepted. Is the testimony of a spouse accepted for his or her partner? All but ash-Shāfi'ī say it is not, but he says it is accepted.

People of sects and innovations as witnesses: Is the testimony of the people of sects and innovations accepted? Abū Ḥanīfa and ash-Shāfi'ī say that it is when their intellectual position does not involve actual falsehood. Mālik and Aḥmad say that it is not accepted in any case.

Bedouins as witnesses: Is the testimony of a bedouin against a city dweller accepted when the bedouin is reputable? Abū Ḥanīfa and ash-Shāfi'ī say that it is accepted in respect of everything. Aḥmad says that it is not accepted at all. Mālik say that it is accepted in respect of injury and killing, but not other rights in which a city dweller can testify, unless similar things apply in the desert.

Counter testimony: As regards counter testimony, Mālik says in the well known position that it is permissible in respect of all the rights of Allah and rights of people, whether in respect of money or retaliation. Abū Ḥanīfa says that it is accepted in all the rights of people, except retaliation, but not in the rights of Allah, like the *ḥudūd*. Ash-Shāfi'ī, in one statement, said that it is accepted in the rights of people, and there are two positions about whether it is accepted in the rights of Allah, like *ḥudūd* for adultery, theft and drinking, the more evident being that it is accepted.

Retracting evidence: When two witnesses testify about property and then retract their evidence after judgement has been given by it, Abū Ḥanīfa, Mālik, ash-Shāfi'ī in the old school and Aḥmad say that they are liable for it. Ash-Shāfi'ī says in the new school that they owe nothing. They agree that the judgement which was based on their testimony is not annulled, but if they retract before the judgement, judgement is not made by their testimony. If a judge renders judgement by the testimony of two iniquitous persons and then their state is learned after that, Abū Ḥanīfa says that the ruling is not undermined. Mālik and Aḥmad say that it is. Ash-Shāfi'ī has two views.

False witnesses: They disagree about the punishment of false witnesses. Abū Ḥanīfa says that there is no punishment for them, but they are made to stand up among their people who are then informed that they are a false witnesses. The other three say that they are punished and made to stand up among their people who are informed that they are false witnesses. Mālik said that it is made public in the mosques and markets.

Glossary

adhān: the call to prayer.

'aqīqa: a sacrifice in celebration of the birth of a child on the eighth day.

'aṣaba: male relatives on the father's side who take the remaining estate, if any, after the heirs with fixed shares have received their shares. Sometimes translated as "universal heir".

'Aṣr: the afternoon prayer.

āyat: a verse of the Qur'an.

basmala: the expression "In the name of Allah, the All-Merciful, the All-Compassionate".

cafiz: (*qafiz*), a measure of grain consisting of twelve *ṣā's*.

Dār al-Ḥarb: the Abode of Conflict, the domain of the unbelievers.

Dār al-Islām: territory of Islam.

dīn: the life-transaction, lit. the debt between two parties, in this usage between the Creator and created.

dhikr: lit. remembrance, mention. Commonly used, it means invocation of Allah by repetition of His names or particular formulae.

dhimma: obligation or contract, in particular a treaty of protection for non-Muslims living in Muslim territory.

dhimmī: a non-Muslim living under the protection of Muslim rule.

Zuhr: the midday prayer

du'ā': making supplication to Allah.

Fajr: the dawn prayer.

faqīh: (plural *fuqahā'*): a man learned in the knowledge of *fiqh* (see below) who by virtue of his knowledge can give a legal judgement.

farḍ: obligatory, an obligatory act of worship or practice of the *Dīn* as defined by the *Sharī'a*.

farḍ kifāya: a collective obligation, something which is obligatory for the community as a whole and is satisfied if one adult performs it.

fatwā: an authoritative statement on a point of law.

- fidya:** a ransom, compensation paid for rites or acts of worship missed or wrongly performed because of ignorance or ill health.
- fiqh:** the science of the application of the *Sharī'a*. A practitioner or expert in *fiqh* is called a *faqīh*.
- fuqahā':** plural of *faqīh*.
- ghusl:** major ablution of the whole body with water required to regain purity after menstruation, lochia and sexual intercourse.
- ḥadd:** (plural *ḥudūd*): Allah's boundary limits for the lawful and unlawful. The *ḥadd* punishments are specific fixed penalties laid down by Allah for specified crimes.
- ḥadīth:** reported speech of the Prophet
- ḥajj:** the annual pilgrimage to Makka which is one of the five pillars of Islam.
- Ḥaram:** Sacred Precinct, a protected area in which certain behaviour is forbidden and other behaviour necessary. The area around the Ka'ba in Makka is a Ḥaram, and the area around the Prophet's Mosque in Madina is a Ḥaram. They are referred to together as al-Ḥaramayn, 'the two Ḥarams'.
- ḥarām:** unlawful in the *Sharī'a*.
- ḥarbī:** a belligerent non-Muslim.
- ḥudūd:** plural of *ḥadd*.
- 'īd:** a festival, either the festival at the end of Ramaḍān or at the time of the *ḥajj*.
- 'idda:** a period after divorce or the death of her husband during which a woman must wait before re-marrying.
- ifrād:** a form of *ḥajj* in which *ḥajj* is performed before 'umra.
- iḥrām:** a state in which one is prohibited to practise certain deeds that are lawful at other times, it is necessary when performing the rites of 'umra and *ḥajj*.
- ijtihād:** to exercise personal judgement in legal matters.
- imām:** Muslim religious or political leader; leader of Muslim congregational worship.
- iqāma:** the call which announces that the obligatory prayer is about to begin.
- 'Ishā':** the night prayer.
- isnād:** a tradition's chain of transmission from one individual to another.

- i'tikāf:** seclusion, while fasting, in a mosque, particularly in the last ten days of Ramaḍān.
- Jāhiliyya:** the Time of Ignorance before the coming of Islam.
- jamra:** lit. a small walled place, but in this usage a stone-built pillar. There are three *jamras* at Mina. One of the rites of *ḥajj* is to stone them.
- Jamrat al-'Aqaba:** the largest of the three *jamras* at Mina. It is situated at the entrance of Mina from the direction of Makka.
- janāba:** major ritual impurity requiring a *ghusl*: intercourse, sexual discharge, menstruation, childbirth.
- jihād:** struggle, particularly fighting in the way of Allah to establish Islam.
- jizya:** a protection tax payable by non-Muslims living under Muslim rule as a tribute to the Muslim ruler.
- Jumu'a:** the day of gathering, Friday, and particularly the *Jumu'a* prayer which is performed instead of *Zuhr* by those present.
- kaffāra:** atonement, prescribed way of making amends for wrong actions, especially missed obligatory actions.
- kharāj:** taxes imposed on revenue from land or the work of slaves.
- khaṭīb:** a speaker or orator; the one who delivers the *khuṭba* in the *Jumu'a* prayer.
- khuff:** leather socks.
- khul':** a form of divorce initiated by the wife from her husband by giving him a certain compensation, or by returning back the *mahr* which he gave her.
- khuṭba:** a speech, and in particular a standing speech given by the imam before the *Jumu'a* prayer and after the two 'Īd prayers.
- Kitābī:** Jew or Christian, one of the People of the Book.
- Maghrib:** the sunset prayer.
- mahr:** dower given by a husband to his wife on marriage.
- maḥram:** a person with whom marriage is forbidden.
- Masjid al-Ḥarām:** the great mosque in Makka. The Ka'ba is situated in it.
- mīqāt:** one of the designated places for entering into *iḥrām* for 'umra or *ḥajj*.
- mu'adhḥin:** someone who calls the *adhān* or call to prayer.
- mudd:** a measure of volume, approximately a double-handed scoop.

- muḥṣan:** a person who has been married and satisfied certain pre-conditions.
- mujtahid:** a scholar who is qualified to carry out *ijtihād*.
- nabidh:** a drink made by soaking grapes, raisins, etc., in water without allowing them to the ferment to the point of becoming intoxicating.
- nāfila:** supererogatory act of worship.
- niṣāb:** minimum amount of wealth on which *zakat* must be paid.
- qāḍī:** a judge, qualified to judge all matters in accordance with the *Shari'a* and to dispense and enforce legal punishments.
- qasāma:** an oath taken by fifty members of a tribe or locality to refute accusations of complicity in unclear cases of homicide.
- qibla:** the direction faced in the prayer by Muslims which is towards the Ka'ba in Makka.
- qirān:** combining *hajj* and *'umra* simultaneously.
- qunūt:** a supplication said in the prayer, particularly in the standing position after *rukū'* in the *Ṣubḥ* prayer.
- rak'at:** a unit of the prayer consisting of a series of standings, bowing, prostrations and sittings.
- rukū':** bowing, particularly the bowing position in the prayer.
- ṣā':** a measure of volume equal to four *mudds*, a *mudd* being a double-handed scoop.
- ṣadaqa:** charitable giving in the Cause of Allah.
- sajda:** the act of prostration.
- salām:** the words "*as-salāmu 'alaykum*".
- shahāda:** bearing witness, particularly bearing witness that there is no god but Allah and that Muḥammad is the Messenger of Allah. It is one of the pillars of Islam. It is also used to describe legal testimony in a court of law.
- Shari'a:** The legal modality of a people based on the revelation of their Prophet. The final *Shari'a* is that of Islam.
- shayṭān:** a devil, particularly Iblīs, one of the *jinn*.
- sīra:** the biography the Prophet.
- Ṣubḥ:** dawn prayer
- sujūd:** prostration.
- sunan:** plural of *sunna*.

- Sunna:** the customary practice of a person or group of people. It has come to refer almost exclusively to the practice of the Messenger of Allah and to the first generation of Muslims.
- Tābi'un:** the second generation of the early Muslims who did not meet the Prophet Muḥammad, may Allah bless him and grant him peace, but learned the *Dīn* of Islam from his Companions.
- tafsīr:** commentary of explanation of the meanings of the Qur'an.
- tahajjud:** voluntary prayers performed at night between '*Ishā*' and *Fajr*.
- tabkīr:** saying "*Allāhu Akbar*", "Allah is greater".
- tabkīr al- iḥrām:** the *tabkīr* which begins the prayer.
- talbiya:** saying "*Labbayk*" ("At Your service") during the *hajj*.
- tamattu':** a form of *hajj* in which *'umra* is done first, and then the *hajj* comes out of *iḥrām* before going back into *iḥrām* for the *hajj* itself.
- tarāwīḥ:** prayers at night in Ramaḍān.
- tashahhud:** lit. to make *shahāda*. In the context of the prayer, it is a formula which includes the *shahāda* and is said in the final sitting position of each two *rak'at* cycle.
- tashriq:** "drying meat in the sun", the days of the 10th, 11th, 12th and 13th of Dhū'l-Hijja when the pilgrims sacrifice their animals and stone the *jamras* at Mina.
- taslīm:** the greeting, "*As-salāmu 'alaykum*". It terminates the prayer.
- ṭawāf:** circumambulation of the Ka'ba, done in sets of seven circuits.
- ṭawāf al-ifāda:** the *ṭawāf* of the Ka'ba that the pilgrims must perform after coming from Mina to Makka on the 10th of Dhū'l-Hijja. It is one of the essential rites of *hajj*.
- tawḥīd:** the doctrine of Divine Unity.
- tayammum:** purification for prayer with clean dust, earth, or stone, when water for *ghusl* or *wuḍū'* is either unavailable or would be detrimental to health.
- ta'zīr:** deterrence, discretionary penalty determined by the *qāḍī*.
- 'umra:** the lesser pilgrimage to the Ka'ba in Makka performed at any time of the year.

waqf: also *ḥabous*, an unalienable endowment for a charitable purpose which cannot be given away or sold to anyone.

wasq: a measure of volume equal to sixty *ṣā's*.

witr: lit. "odd", a single *rak'at* prayed immediately after the *shaf'* which makes the number of *sunna* prayers uneven.

wuḍū': ritual washing with water to be pure for the prayer of hands, mouth, nostrils, face, forearms, head, ears and feet.

zakat: one of the five pillars of Islam. It is a wealth tax paid on certain forms of wealth: gold and silver, stable crops, livestock, and trading goods.

zakāt al-fiṭr: a small obligatory head-tax imposed on every Muslim who has the means for himself and his dependants. It is paid once yearly at the end of Ramaḍān.

zīndiq: a term used to describe a heretic whose teaching is a danger to the community or state.

THE
MERCY
IN THE DIFFERENCE OF
THE FOUR SUNNI SCHOOLS OF ISLAMIC LAW

By al-Qadi as-Safadi of Damascus



This book is the first translation into English of a well-known and widely used, six hundred year old classical Arabic text. Its author, Qadi Safadi of Damascus, designed it for his contemporaries as a reference book to acquaint the followers of the four schools of fiqh with the rulings of the other schools, so that needless antagonism and misunderstandings did not spring up out of ignorance and prejudice. The need for such a book is even more pressing in the present circumstances, and this excellent and succinct book which covers the whole spectrum of the Deen is a timely and much needed addition to the Islamic source material available in the English Language.



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